(24,803)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 171

CHICAGO LIFE INSURANCE COMPANY AND THE FEDERAL LIFE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

BERTHA R. CHERRY.

IN ERROR TO THE APPELLATE COURT FOR THE FIRST DISTRICT OF THE STATE OF ILLINOIS.

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a Record from Superior Court of Cook County to Supreme Court.

Gen. No. 277,253.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE COMPANY et al.

Filed Appellate Court, May 8-1914. Alfred R. Porter, Clerk.

Filed Jan. 13, 1914. J. McCan Davis, Clerk of Supreme Court.

Filed Mar. 29, 1915. Chas. W. Vail, Clerk of Supreme Court.

1 *Placita, Superior Court of Cook County.*

UNITED STATES OF AMERICA,
State of Illinois, County of Cook, ss:

Pleas, before the Honorable Clarence N. Goodwin, one of the Judges of the Superior Court of Cook County, in the State of Illinois, holding a branch Court of said Court, at a regular term of said Superior Court of Cook County, begun and holden at the Court House, in the City of Chicago, in said County and State, on the first Monday, being the Third day of November, in the year of our Lord one thousand nine hundred and Thirteen, and of the Independence of the United States of America the one hundred and Thirty-eighth.

Present:

The Honorable Clarence N. Goodwin, Judge of the Superior Court of Cook County.
Maclay Hoyne, State's Attorney.
Michael Zimmer, Sheriff of Cook County.

Attest:
RICHARD J. McGRATH, *Clerk.*

Be it remembered that heretofore, towit: on the 22nd day of January A. D. 1910 a certain Præcipe was filed in the office of the Clerk of said Court, in words and figures following to-wit:

2 *Præcipe, Superior Court.*

STATE OF ILLINOIS,
County of Cook, ss:

Superior Court of Cook County, January Term, A. D. 1910.

Mrs. BERTHA R. CHERRY, Plaintiff,
vs.
CHICAGO LIFE INSURANCE Co. and FEDERAL LIFE INSURANCE Co.,
Defendant-.

Debt.

Damages, $2,500.00.

The Clerk of said Court will issue a Summons in the above entitled cause to said Defendant in a plea of Debt to the damage of said Plaintiff in the sum of Two Thousand Five Hundred ($2,500.00) Dollars, direct the same to the sheriff of Cook County to execute and make it returnable to the February Term of said Court, A. D. 1910.

ATWOOD, PEASE & LOUCKS,
Plaintiff's Attorney-.

To Charles W. Vail, Esq., Clerk.

Chicago, January 22nd, 1910.

[Endorsed:] 277,253. 8496. Superior Court of Cook County. Mrs. Bertha R. Cherry, vs. Chicago Life Insurance Co. and Federal Life Insurance Co. Præcipe. $— Paid. Atwood, Pease & Loucks, Plaintiff's Attorney-.

3 Thereupon on the same day to-wit, on the 22nd day of January, A. D. 1910, a certain People's Writ of Summons issued out of the Office of the Clerk of said Court and under the Seal thereof directed to the Sheriff of Cook County to execute which writ together with the return of the Sheriff thereon endorsed are in words and figures following to-wit:

Summons in Debt, Superior Court of Cook County.

STATE OF ILLINOIS,
County of Cook, ss:

The People of the State of Illinois to the Sheriff of said County, Greeting:

We command you that you summon Chicago Life Insurance Co. and Federal Life Insurance Co. if *he* shall be found in your County, personally to be and appear before the Superior Court of Cook

County, on the first day of the next Term thereof, to be holden at the Court House, in Chicago, in said County, on the first Monday of February next, to answer unto Mrs. Bertha R. Cherry of a plea that they*h* render to the said Plaintiff Two Thousand Five hundred (2,500) Dollars and — Cents, which they owe to and unjustly detain from said Plaintiff to the damage of said Plaintiff as is said in the sum of Two Thousand, five hundred Dollars.

And have you then and there this Writ, with an endorsement thereon in what manner you shall have executed the same.

Witness, Richard J. McGrath, Clerk of our said Court, and the Seal thereof, at Chicago, aforesaid, this 22nd day of January, A. D. 1910.

CHARLES W. VAIL, *Clerk.*

[Endorsed:] 277,256. 18644. Superior Court of Cook County, February Term, A. D. 1910. Cherry vs. Chicago Life Insurance Co. et al. Summons in Debt. Atwood, Pease & Loucks, Plaintiff's Attorney-.

Pd. $3.00 in .20.

Served this writ on the within named Federal Life Insurance Co. a corporation, by delivering a copy thereof to C. A. Atchinson, Vice-President of said corporation this 24th day of January 1910. The president of said corporation not found in my county.

CHRISTOPHER STRASSHEIM, *Sheriff,*
By HENRY F. HERRMAN, *Deputy.*

Served this writ on the within named Chicago Life Insurance Co. a corporation, by delivering a copy thereof to H. S. Duncombe, Agent of said corporation this 26th day of January 1910. The president of said corporation not found in my county.

CHRISTOPHER STRASSHEIM, *Sheriff,*
By ANDREW J. SCHULTZ, *Deputy.*

4 And afterwards to-wit, on the 29th day of January, A. D. 1910 a certain Appearance was filed in the office of the Clerk of said Court, in words and figures following, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

277,253.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE COMPANY et al.

We hereby enter the appearance of the Chicago Life Insurance Company, a corporation, defendant in the above entitled cause, and our own as its attorneys.

DUNCOMBE & EVANS,
Attorneys for Chicago Life Insurance Company, Defendant.

And afterwards to-wit, on the 14th day of February A. D. 1910 a certain Declaration was filed in the office of the Clerk of said Court in words and figures following to-wit:

5 *Copy Declaration.*

Filed Feb. 14, 1910.

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County, February, Term, 1910.

Gen. No. 277,253. Term No. 8496.

MRS BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY.

Mrs. Bertha R. Cherry, by Atwood, Pease and Loucks, her attorneys, complains of Chicago Life Insurance Co. and Federal Life Insurance Co., of a plea of Debt.

For that Whereas, the plaintiff on the 3rd day of February, 1908 at a term of the Circuit Court of Chester County, in the State of Tennessee, by the consideration and judgment of the said court recovered against the defendants in a certain action of Debt the sum of Sixteen Hundred Sixty-six and 25/100 ($1666.25) and costs of suit, taxed at the sum of thirty-nine and 55/100 ($39.55) Dollars, whereof the defendants were convicted as by the record thereof remaining in the same court more fully appears, which said judgment still remains in full force; and the plaintiff avers that thereafter on, to-wit the 31st day of December, 1908, the Federal Life Insurance Co. and the Chicago Life Insurance Co., said defendants, through their attorney Moreau P. Estes, sued out of the Court of Civil Appeals of Tennessee for the Western Division thereof, at Jackson, a writ of error to revise and correct a judgment rendered against them in the Circuit Court of Chester County as aforesaid; that thereafter, on the 23rd day of January, 1909, by the consideration of said Court of Civil Appeals, the said judgment of the said Circuit Court of Chester County aforesaid was affirmed, and it was ordered and adjudged by the said Court of Civil Appeals that the defendant in error Mrs. Bertha R. Cherry have and recover of the Chicago Life Insurance Co. and the Federal Life Insurance Co., jointly and separately the sum of Sixteen Hundred Sixty-six and 25/100 ($1666.25) dollars and the costs of the Court below, and of them and Moreau P. Estes, security on writ of error bond the further sum of Ninety-five and 79/100 ($95.79) dollars interest on said judgment from the date of the rendition below to January 23, 1909, together with the costs of the appeal taxed at the sum of, to-wit Sixteen and 40/100 ($16.40) dollars, whereof the defendants were convicted as by the

record thereof remaining in the same court more fully appears, which said judgment still remains in full force and thereafter the said Chicago Life Insurance Co. and said Federal Life Insurance Co. filed a petition for Certiorari in the Supreme Court of Tennessee to review the judgment of the Court of Civil Appeals, and thereafter, to-wit, on the 12th day of June, 1909 the said cause came on to be heard and was heard by the Supreme Court of Tennessee upon the petition filed by the plaintiffs in error for Certiorari to review the judgment of the Court of Civil Appeals heretofore entered in this cause, assignments of error, brief of counsel and the transcript of the record from the Circuit Court of Chester County, Tennessee, and by the consideration of the said Supreme Court of Tennessee it was ordered, adjudged and decreed that the said Writ of Certiorari be dismissed and that the defendant in error Bertha R. Cherry have and recover from the Chicago Life Insurance Company and the Federal Life Insurance Company and Moreau P. Estes security on bond executed for said writ of error all the costs incident to said writ of error including the costs of said Certiorari proceedings taxed at the sum of, to-wit Twenty eight and 90/100 dollars; whereof the defendants were convicted as by the record thereof remaining in the said court more fully appears, which said judgment still remains in full force; and yet the defendants or either of them have not paid to the plaintiff the said sums of money so by her recovered, as aforesaid, or any part thereof but refuse so to do to the damage of the plaintiff of two thousand five hundred ($2500.00) dollars and therefore she brings her suit.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

Attorneys for Plaintiff.

6 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County, February Term, 1910.

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. and FEDERAL LIFE INSURANCE CO.

STATE OF ILLINOIS,
County of Cook, ss:

Charles O. Loucks being first duly sworn on oath deposes and says that he is one of the attorneys for and duly authorized agent of the plaintiff in the above entitled cause; that the demand of the plaintiff in the above entitled cause is for the amount due on judgment obtained by the plaintiff against the defendants January 23, 1909 in the Court of Civil Appeals of Tennessee for the Western Division thereof on writ of error to reverse and correct judgment rendered in favor of plaintiff against the defendants in the Circuit Court of

Chester County, State of Tennessee February 3, 1908 and the judgment of the Supreme Court of Tennessee on writ of certiorari and for interest and costs accrued on all of said judgments and proceedings as set forth in said declaration; that nothing has been paid to the plaintiff by the defendants or either of them, and that there is due the plaintiff from the defendants, after allowing to them all just credits, deductions and set offs—the sum of nineteen hundred thirty six and 23/100 ($1936.23) dollars.

(S'g'd) CHARLES O. LOUCKS.

Subscribed and sworn to before me this 24th day of January, A. D. 1910.

[SEAL.] (S'g'd) FLORENCE B. HEAPY,
Notary Public.

7 *Copy of Instrument Sued Upon.*

The instrument immediately next following being copy of a judgment of the Circuit Court of Chester County, State of Tennessee, referred to in judgment of Court of Civil Appeals of Tennessee for the Western Division thereof, hereinafter set forth.

Order Sustaining Demurrer of Plaintiff and Overruling Plea in Abatement of Chicago Life Insurance Co.

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO. et al.

This day came the parties by their attorneys, and the plea in abatement *ofled* by defendant Chicago Life Insurance Company and demurrer thereto *was* heard by the Court and after argument of counsel the Court was of the opinion that the demurrer is well made and that said plea should be overruled and disallowed, which is so ordered with leave of said defendant to further plead to said cause of action if it so desired, when counsel for said defendant stated in open court he was not authorized to represent said defendant further, the cause was further heard upon the plea in abatement filed by the Federal Life Insurance Co., the replication of plaintiff thereto and issues joined thereon. The same being submitted to the Court without the intervention of a jury, when after hearing proof introduced and argument of counsel the Court finds the issues in favor of the plaintiff and overrules the said plea in abatement and gives leave to defendant to plead to said cause of action *it if* so desired when counsel for defendant stated in open court that he was not authorized to further represent the defendants.

Thereupon the said defendants being solemnly called to come into open court as they were bound to do and defend said suit come not but made default. Thereupon a jury of good and lawful men, to-wit: M. E. Bishop, W. G. Gately, N. P. Ingraham J. W. Butler, R.

D. Murchison, B. Talley, B. F. Robertson, W. B. Sumner, Whit Seaton, A. B. Clifford, J. N. Gibson and W. G. Thompson, who being duly empaneled, sworn and charged to assess the damages claimed by plaintiff in her declaration upon their oath say that they find for plaintiff the face value of the policy, to-wit: the sum of $1250.00, with interest thereon for twelve months, amounting to the sum of $75.00 making the sum of $1325.00, and they further find in her favor 15% of said amount, to-wit: the sum of $198.75 for cost and expenses as provided by acts of 1901, making the total amount $1523.75.

Thereupon the plaintiff moved the Court for a new trial as to the amount of cost and expenses as found by them, to-wit: the sum of $198.75, for the reason there is no evidence to support the said amount, the proof being that 25% would be a reasonable amount for attorneys' fees incurred by plaintiff in this cause which the court is pleased to sustain and which verdict is set aside and for nothing held, and thereupon another jury was summoned and said matters submitted to them, said jury, to-wit Rob Mayfield, John Ellis, Jeff Cothren, Lee Melton, Tom Cothren, Whit Seaton, John McDonald, C. C. Hardeman, A. B. Feilds, C. Parker, H. J. Alexander and John Galbraith being duly empaneled, sworn and charged to ascertain the amount of damages that plaintiff has sustained and entitled to recover, who upon their oath say that they find for the plaintiff the face — of said policy, to-wit, the sum of $1250.00 and interest on same for twelve months amounting to $75.00, the further sum of $341.25 for cost and expenses incurred by plaintiff in this suit including attorneys' fees making total amount of $1666.25. It is therefore the judgment of the Court that the plaintiff Mrs. Bertha R. Cherry recover from defendants Chicago Life Insurance Co. and the Federal Life Insurance Co. jointly and separately the sum of $1666.25 and all costs of this suit for which execution may issue.

Filed February 3, 1908. C. L. Parrish, Clerk."

The following instrument is a copy of the judgment of the Court of Civil Appeals of Tennessee for the Western Division thereof in said declaration mentioned:

#1, Chester. Law.

"CHICAGO LIFE INSURANCE CO. and THE FEDERAL LIFE INSURANCE CO.

vs.

MRS. BERTHA CHERRY.

This cause was heard upon the transcript of the record from the Circuit Court of Chester County, and it appearing to the Court that in the judgment of the court below there is no error, the same is in all things affirmed.

8 It is therefore ordered and adjudged that the defendant in error, Mrs. Bertha R. Cherry, have and recover of the

Chicago Life Insurance Co. and the Federal Life Insurance Co. jointly and separately the sum of one thousand six hundred sixty-six and 25/100 ($1666.25) dollars and the costs of the Court below and of them and Moreau P. Estes, security on writ of error bond the further sum of ninety-five and 79/100 ($95.79) dollars interest on said judgment from the date of the rendition below to this date, together with the costs of the appeal, for all of which let execution issue.

Thereupon the Court adjourned until Monday morning at 9 o'clock.

JNO. M. TAYLOR.
R. M. BARTON, JR.
A. B. LAMB.
H. E. PALMER.
S. F. WILSON.

M. B. 2, page 31, Jan. 23, 1909.

The following is a copy of the judgment of the Supreme Court of Tennessee in said declaration mentioned.

In the Supreme Court of Tennessee, at Jackson, Tennessee.

"CHICAGO LIFE INSURANCE CO. and FEDERAL LIFE INSURANCE CO.
vs.
BERTHA R. CHERRY.

Be it remembered that this cause came on to be heard and was heard, by the Supreme Court of Tennessee upon the petition filed by the plaintiffs in error for certiorari to review the judgment of the Court of Civil Appeals heretofore rendered in this cause, assignment of errors, brief of counsel and the transcript of the record from the Circuit Court of Chester County, Tennessee, when the court is of the opinion that the Circuit Court of Chester County did have jurisdiction of the Chicago Life Insurance Co. and the Federal Life Insurance Company, and that they and each of them were properly before Court by due process of law, and that there was no error in the judgment of the Court of Civil Appeals dismissing the writ of error sued out by the said Chicago Life Insurance Co. and the Federal Life Insurance Co. seeking to review and reverse the judgment of the Circuit Court of Chester County and the said judgment of the Court of Civil Appeals is in all things affirmed. It is therefore ordered adiudged and decreed that the said writ of certiorari be dismissed and that the defendant in error Bertha R. Cherry, have and recover from the Chicago Life Insurance Company and the Federal Life Insurance Company and Moreau P. Estes, security on bond executed for said writ of error, all the costs incident to said writ of error including the cost of said certiorari proceedings for which execution may issue.

And it further appearing to the Court that since the trial of said cause in the Court of Civil Appeals the original papers certified from

the Circuit Court of Chester County, and being the policy sued upon in this cause, together with the application for said policy *has* been mislaid or misplaced and that the said papers were by consent supplied and are now filed in this cause, upon motion of defendant in error it is ordered by the Court that said papers, or the original if found may be withdrawn from this record by leaving a true and correct copy of the same, and the clerk of this court will so certify the withdrawal of either the papers so supplied or the originals."

9 The following is a copy of bill of costs in said declaration mentioned.

Bill of Costs.

#1, Chester Law Docket.

"BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. and FEDERAL LIFE INSURANCE CO.

State Tax Supreme Court		$5.00
John W. Buford, Clerk—Fil. Record 75 Ent. on 8 dockets	2.00	
Ent. Sec. of Rec. 25. Packing and sending out record to both parties 50 Judge 75 do. vs. surety 25 For cost 25 Order 25 Motion 25 Order for Ex. 25 Fi. fa. $1.50 Recording Rec. 25 Postage 10 Filing Assignment of errors 50 Filing Briefs $1.50 Notice to Counsel 50 Ent. and End. Sup. Court costs on Ex. and Docket $1.00 Ent. & End. Inf. Ct. Costs on ex. & docket $1.00 Recording Sheriff's return 25 Entries at Rule 80 Filing opinion 50 Filing Bond 50 Writ of Error Certiorari Fil. Add. Record Fil. Pet. to rehear Fil. Ans. Order Dis. Precedendo Sea. Copy of Decree with pro. Copy of Opinion with Pro. Cost incident to Certiorari to Sup. Court.....	7.50	
		$23.90

Lower Court Costs.

Clerk, C. L. Parrish	$17.70	
State & County Tax	5.00	
Sheriff Weirr	1.50	
Constable	.25	
N. P. Fees	1.00	
Witness Fees	14.10	
Total lower court costs see transcript		$39.35
Total costs		$68.45

I, John W. Buford, Clerk of Supreme Court, do certify that the above is a correct and complete bill of costs in the above mentioned case as appears on file in my office.

JOHN W. BUFORD, *Clerk.*
By J. E. SPRINGBETT, *D. C.*

This 13th day of November 1909."

10 And afterwards to-wit, on the 3rd day of March A. D. 1910 the following proceedings were had and entered of record in said Court to-wit:

On motion of defendants' attorney it is ordered that the plaintiff be and is hereby required to file a bond for costs herein, within ten days from this date.

And on to-wit, *on* the 3d day of March, A. D. 1910 a certain Bond for Costs was filed in the office of the Clerk of said Court, in words and figures following to-wit:

Security for Costs, Superior Court of Cook County.

STATE OF ILLINOIS,
County of Cook, ss:

Superior Court of Cook County.

Gen. No., 277,253. Term —, 8496.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY.

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay, or cause to be paid, all costs which may accrue in this action, either to the opposite party or to any of the officers of this Court, in pursuance of the laws of this State.

Dated this 3rd day of March, A. D. 1910.

FRANK B. PEASE.

No. 227,253. T. N., 8496. Superior Court of Cook County. Cherry vs. Chicago Life Insurance Co. et al. Bond for Costs.

11 And afterwards to-wit, on the 28th day of March, A. D. 1910, the following proceedings were had and entered of record in said Court to-wit:

No. 277,253.

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE COMPANY et al.

Debt.

Now on this day it is ordered that the defendants' motion for a rule on the plaintiff to file copy of instrument sued on be and is hereby overruled and denied and on motion of plaintiff's attorney it is ordered that the defendants be and are hereby required to plead to the plaintiff's declaration filed herein within thirty days from this date.

And afterwards to-wit, on the 21st day of April A. D. 1910, a certain Appearance was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 277,253, Term No., 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INS. CO. et al.

We hereby enter the appearance of Federal Life Ins. Co., in this suit and our appearance as its attorneys.
Chicago, Feb. 7th, 1910.

C. A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Federal Life Ins. Company.

And on to-wit, on the 21st day of April A. D. 1910, a certain plea was filed in the office of the Clerk of said Court, in words and figures following to-wit:

12 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 277,253, Term No., 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INS. CO. et al.

1. And the defendant Federal Life Ins. Co., by C. A. Atkinson, and Chilton P. Wilson, its attorneys, comes and defends the wrong

and injury, when, etc., and says that there is not any record of the supposed recoveries in the said declaration mentioned remaining in the said courts in the State of Tennessee in manner and form as the plaintiff has above in her said declaration alleged:

And this the defendant is ready to verify wherefor- it prays judgment if the plaintiff ought to have her aforesaid action against it, etc.

C. A. ATKINSON,
CHILTON P. WILSON,
Att'ys for Fed. Life Ins. Co.

2. And for a further plea in this behalf the defendant Federal Life Ins. Co., comes and defends, etc., and says that before and at the time of the alleged recoveries of the said several supposed judgments in the said declaration and before and at the time of the supposed service of process upon this defendant in the said supposed recoveries in the said declaration mentioned the said Federal Life Ins. Co., was a corporation organized and doing business under the laws of the State of Illinois and was not licensed to nor doing business in the State of Tennessee, and that this defendant was not served with process in said alleged suits and did not accept nor authorize any one for it to accept service of process in said suits and did not authorize an appearance by attorney or otherwise in said suits and did not have notice of the supposed proceedings nor was the said Federal Life Ins. Co., or its officers or agents upon whom service could be had found or served with process in the said supposed actions in said declaration mentioned; and this the said Federal Life Ins.
13 Co., prays may be inquired of by the country, etc.

C. A. ATKINSON,
CHILTON P. WILSON,
Att'ys for Fed. Life Ins. Co.

3. For a further plea in this behalf the defendant Federal Life Ins. Co., says that the plaintiff ought not to have her aforesaid action against it the defendant, because it says it is a corporation organized and doing business under the laws of the State of Illinois and that before and at the time of the supposed recoveries in the said declaration mentioned, it the defendant was not licensed to nor doing business in the State of Tennessee and that the said several supposed recoveries in the said declaration mentioned were recoveries in whole or in part on and for a penalty and to enforce a penal law of the State of Tennessee.

And this the defendant is ready to verify wherefor- it prays judgment if the plaintiff ought to have her aforesaid action against it, etc.

C. A. ATKINSON,
CHILTON P. WILSON,
Att'ys for Fed. Life Ins. Co.

STATE OF ILLINOIS,
County of Cook, ss:

Chilton P. Wilson, being duly sworn deposes and says he is one of the attorneys for the Federal Life Ins. Co., in this suit and that he is the agent of said Federal Life Ins. Co., in this behalf.

Affiant states he verily believes the defendant, Federal Life Ins. Co., has a good defense to this suit as to the whole of the plaintiff's demand.

Affiant further states that the defense of the Federal Life Ins. Co., is of the nature as set forth in the pleas hereinabove filed.

And further this affiant saith not.

CHILTON P. WILSON.

Subscribed and sworn to before me this 21st day of April, A. D. 1910.

____ ____,
Notary Public.

14 And afterwards to-wit, on the 9th day of June A. D. 1910 a certain Plea was filed in the Office of the Clerk of said Court, in words and figures following to-wit.

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

277,253. 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

1. And the defendant, Chicago Life Insurance Company, by Duncombe & Evans, its attorneys, comes and defends the wrong and injury, when etc., and says that there is not any record of the supposed recoveries in the said declaration mentioned remaining in the said courts in the State of Tennessee in manner and form as the plaintiff has above in her said declaration alleged:

And this the defendant is ready to verify; wherefore it prays judgment if the plaintiff ought to have her aforesaid action against it, etc.

2. And for a further plea in this behalf the defendant, the Chicago Life Insurance Company, comes and defends, etc. and says that at the time of the alleged recoveries of the said several supposed judgments in the said declaration and at the time of the supposed service of process upon this defendant in the said supposed recoveries in the said declaration mentioned, the said Chicago Life Insurance Company was a corporation organized and doing business under the laws of the state of Illinois, and was not licensed to nor doing busi-

ness in the state of Tennessee, and this defendant was not served with process in said alleged suits and did not accept, nor authorize anyone for it to accept service of process in said suits, and did not authorize an appearance by attorney or otherwise in said suits and did not have notice of the supposed proceedings nor was the said Chicago Life Insurance Company, or its officers or agents upon whom service could be had, found or served with process in the said supposed actions in said declaration mentioned; and this the said Chicago Life Insurance Company prays may be inquired of by the country, etc.

3. For a further plea in this behalf the defendant, Chicago Life Insurance Company, says that the plaintiff ought not to have her aforesaid action against it, the said Chicago Life Insurance Company, because it says it is a corporation organized and doing business under the laws of the State of Illinois, and that at the time of the supposed recoveries in the said declaration mentioned, it, the said Chicago Life Insurance Company, was not licensed to nor doing business in the state of Tennessee, and that the said several supposed recoveries in the said declaration mentioned were recoveries in whole or in part on and for a penalty and to enforce a penal law of the state of Tennessee.

And this the defendant is ready to verify; wherefore it prays judgment if the plaintiff ought to have her aforesaid action against it, etc.

DUNCOMBE & EVANS,
Att'ys for Chgo. Life Ins. Co.

STATE OF ILLINOIS,
County of Cook, ss:

John T. Evans, being first duly sworn, deposes and says he is one of the attorneys for the Chicago Life Insurance Company, in this suit and that he is the agent of the said Chicago Life Insurance Company, in this behalf.

Affiant states he verily believes the defendant, Chicago Life Insurance Company, has a good defense to this suit as to the whole of the plaintiff's demand.

Affiant further states that the defense of the Chicago Life Insurance Company is of the nature as set forth in the pleas hereinabove filed.

Further affiant saith not.

JOHN T. EVANS.

Subscribed and sworn to before me this 9th day of June, 1910.

SADIE FLAUSBURG,
Notary Public.

And afterwards to-wit, on the 25th day of February A. D. 1911 the following proceedings were had and entered of record in said Court to-wit.

Now on this day it is ordered that the plaintiff's motion to strike the defendants' pleas from the files herein, be and is hereby overruled and denied, to which the plaintiff excepts.

And afterwards to-wit, on the 8th day of March, A. D. 1911, a certain Replication was filed in the office of the Clerk of said Court, in words and figures following to-wit.

16 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 277,253, Term No. 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

And the plaintiff, as to the plea of the defendant, Chicago Life Insurance Company, a corporation, by it first above pleaded, says that she, the plaintiff, by reason of anything in that plea alleged, ought not to be barred from having her aforesaid action, because she says, that there is such record of the said recovery remaining in the said Circuit Court of Chester County, in the State of Tennessee, and the Court of Civil Appeals of the State of Tennessee, and the Supreme Court of Tennessee, of the State of Tennessee, as she has above in said declaration alleged. And this the plaintiff is ready to verify by the said record, etc., and she prays that the same may be seen and inspected by the court here, etc.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

And the plaintiff, as to the plea of the defendant, Chicago Life Insurance Company, a corporation, by it secondly above pleaded, and whereof it has put itself upon the country, does the like.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

And the plaintiff, as to the plea of the defendant, Chicago Life Insurance Company, a corporation, by it thirdly above pleaded, says that she, the plaintiff, by reason of anything in that plea alleged, ought not to be barred from having her aforesaid action, because she says that the said recoveries in her said declaration mentioned were not recoveries in whole or in part on and for a penalty, and were not to enforce a penal law of the State of Tennessee. And of this the plaintiff puts herself upon the country, etc.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

17 And on to-wit, on the 8th day of March A. D. 1911 a certain Replication was filed in the office of the Clerk of said Court, in words and figures following to-wit.

18 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 277,253. Term No. 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

And the plaintiff, as to the plea of the defendant, Federal Life Insurance Company, a corporation, by it first above pleaded, says that she, the plaintiff, by reason of anything in that plea alleged, ought not to be barred from having her aforesaid action, because she says, that there is such record of the said recovery remaining in the said Circuit Court of Chester County, in the State of Tennessee, and the Court of Civil Appeals of the State of Tennessee, and the Supreme Court of Tennessee, of the State of Tennessee, as she has above in said declaration alleged. And this the plaintiff is ready to verify by the said record, etc., and she prays that the same may be seen and inspected by the court here, etc.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

And the plaintiff, as to the plea of the defendant, Federal Life Insurance Company, a corporation, by it secondly above pleaded, and whereof it has put itself upon the country, does the like.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

19 And the plaintiff, as to the plea of the defendant, Federal Life Insurance Company, a corporation, by it thirdly above pleaded, says that she, the plaintiff, by reason of anything in that plea alleged, ought not to be barred from having her aforesaid action, because she says that the said recoveries in her said declaration mentioned were not recoveries in whole or in part on and for a penalty, and were not to enforce a penal law of the State of Tennessee. And of this the plaintiff puts herself upon the country, etc.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

20 And afterwards to-wit, on the 25th day of March A. D. 1911 a certain Stipulation was filed in the office of the Clerk of said Court, in words and figures following to-wit.

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 8496.

BERTHA M. CHERRY
vs.
FEDERAL LIFE INSURANCE Co. et al.

It is hereby stipulated and agreed by and between the parties hereto by their respective attorneys that the above entitled cause may be passed upon five days' notice.

Dated, Chicago, March 20th, A. D. 1911.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.
C. A. ATKINSON &
CHILTON P. WILSON,
Attorneys for Defendant Fed. Life Ins. Co.

And afterwards to-wit, on the 23rd day of January, A. D. 1912 the following proceedings were had and entered of record in said Court to-wit.

On motion of plaintiff's attorney it is ordered that leave be and is hereby given the plaintiff to amend her replication to the defendant's second plea now on file.

And on to-wit, on the 23rd day of January, A. D. 1912, a certain Amended Replication to Defendant's 2nd Plea was filed in the office of the Clerk of said Court, in words and figures following to-wit.

21 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 8496.

BERTHA R. CHERRY
v.
CHICAGO LIFE INSURANCE COMPANY et al.

Amended Replication to Defendant's Second Plea, by Leave of Court First Had and Obtained.

And the plaintiff as to the plea of the defendant, Chicago Life Insurance Company, a corporation, by it secondly above pleaded, says that she, the plaintiff, by reason of anything in that plea alleged ought not to be barred from having her aforesaid action, because she says that said defendant, Chicago Life Insurance Company is

estopped from denying the jurisdiction of the Circuit Court of Chester County, in the State of Tennessee, and the Court of Civil Appeals of the State of Tennessee and the Supreme Court of Tennessee of the State of Tennessee, of the person of said defendant, Chicago Life Insurance Company, because she says that heretofore on, to-wit, the 4th day of February, A. D. 1907, one C. L.
22 Parrish, then and there Clerk of the Circuit Court of Chester County, in the State of Tennessee, issued and delivered to the Sheriff of Davidson County, State of Tennessee, a certain summons in the following words and figures, to-wit:

"Summons.

Mrs. Bertha R. Cherry
v.
Chicago Life Insurance Co. et al.

The State of Tennessee to the Sheriff of Davidson County, Greeting:

You are hereby commanded to summons Chicago Life Insurance Company, a foreign Corporation authorized to do business in Tennessee, and the Federal Life Insurance Company, also a foreign Corporation, if to be found in your County, to appear before the Judge of our Circuit Court, to be held for the County of Chester at the Court House in the town of Henderson on the First Monday in June next, then and there to answer Mrs. Bertha Ripman Cherry in an action of debt due by policy issued by the Chicago Life Insurance Company on the life of Rufus M. Cherry for her benefit, for the sum of Twelve Hundred and Fifty ($1250.-00) Dollars and re-insured by the said Federal Life Insurance Company, and the Further sum of Five Hundred ($500.00) Dollars, attorneys' fee and interest to her damage Eighteen Hundred ($1800.00) Dollars.

Here fail not and have you then and there this writ:

Witness C. L. Parrish, Clerk of our said Court at office the 4th Monday in February, A. D. 1907.

C. L. PARRISH, *Clerk.*"

And that thereafter, on, to-wit, the 20th day of May, A. D. 1907, one Reau E. Folk, Insurance Commissioner of the State of Tennessee, then and there endorsed on the back of said summons the following endorsement, to-wit:

23 "By virtue of authority in me vested I have today acknowledged service of the within summons for the Chicago Life Insurance Company, this the 20th day of May, A. D. 1907, at 11:30 A. M.

REAU E. FOLK,
Insurance Commissioner."

All of which was then and there filed in the office of said clerk of said Circuit Court of Chester County in the State of Tennessee on, to-wit, the 28th day of May, A. D. 1907.

Plaintiff alleges that service of said process was in accordance with the statute laws of the State of Tennessee in such cases made and provided, and thereafter plaintiff filed her declaration in said cause, setting out her cause of action against the defendant and the defendant appeared as required by said summons and submitted to the jurisdiction of the court, and on the 16th day of September, A. D. 1907, by its attorneys, Moreau P. Estes and P. M. Estes, filed with said Circuit Court of Chester County in the State of Tennessee its certain plea in abatement in the words and figures as follows, to-wit:

"BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO.

Plea in Abatement of Defendant Chicago Life Insurance Company.

The defendant for plea in abatement to the summons or writ in this cause and to this suit says:

I.

The said writ or summons is addressed to the Sheriff of Davidson County and not Chester County, in which the said suit is instituted, and does not show that it is a counterpart summons, or that there is a defendant who has been served with process in Chester County.

24 II.

The writ or summons shows upon its face that it was never served upon Reau E. Folk, Insurance Commissioner, by the Sheriff of Davidson County, but that the service of process is acknowledged on behalf of the Chicago Life Insurance Company by the said commissioner.

The Acts of 1895, Chapter 160, Sec. 9, sub-sec. 3, requiring a foreign insurance company to file a power of attorney with the Insurance Commissioner, constituting him an agent upon whom process may be served, does not authorize the Commissioner of Insurance to acknowledge service of process on behalf of foreign insurance Companies, but expressly provides that such process must be served upon such Commissioner by the proper officer of the County, in which the commissioner may have his office.

III.

The said Insurance Commissioner was not in the county of Chester at the time that the writ or summons was issued, and was not in Chester county at the time that he acknowledged service of process on behalf of this defendant, under the above act authorizing the service of process upon the Commissioner, he is made the statutory

agent of the defendant, and merely stands in the place of the defendant. For this reason the suit must be brought in the County where the Commissioner lives and where he has his office, and cannot be brought in a County where he does not live and has no office, and when he is not in the County either at the time the said writ or summons was issued, or at the time that he acknowledged service of process for defendant. This defendant, therefore, asks that the writ or summons in this case be quashed and abated and that this suit be dismissed.

MOREAU P. ESTES.
P. M. ESTES.

STATE OF TENNESSEE,
County of Davidson:

Moreau P. Estes, Attorney for the defendant, Chicago Life Insurance Company, makes oath that the statements in the above plea are true.

MOREAU P. ESTES.

Signed and sworn to before me, this 14th day of September, 1907.

[N. P. SEAL.] JAS. B. McKEE,
Notary Public.

Filed Sept. 16, 1907. C. L. Parrish, Clerk.

25 That thereafter the plaintiff, Bertha R. Cherry, by her attorneys, Biggs & Spragins, filed with the said Circuit Court of Chester County, in the State of Tennessee, her demurrer to said plea in abatement of said Chicago Life Insurance Company, which demurrer was in the following words and figures, to-wit:

"MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO.

Demurrer of Plaintiff to Plea in Abatement of Chicago Life Ins. Co.

The planitiff demurs to the plea in abatement filed by the Chicago Life Insurance Company in this cause, and for cause of demurrer says:

I.

Because none of the reasons assigned in the plea in abatement in this case for want of proper service of process on the defendant, Chicago Life Insurance Company are sufficient to show want of legal service.

II.

Because from the facts appearing from the process issued and returned and from the allegations stated in said plea, the Chicago Life Insurance Co. has been legally and properly served with process, and is properly before the Court.

Wherefore plaintiff prays that said plea be overruled.

BIGGS & SPRAGINS,
Attorneys for Plaintiff.

Filed June 28th, 1908. C. L. Parrish, Cl'rk."

26 That thereafter, on, to-wit, the 3rd day of February, A. D. 1908, among other things, the following proceedings were had in said Circuit Court of Chester County, in the State of Tennessee, to-wit:

"This day came the parties by their attorneys, and the plea in abatement filed by defendant Chicago Life Insurance Company and demurrer thereto was heard by the Court, and after argument of counsel the Court was of the opinion that the demurrer was well made, and that said plea should be overruled and disallowed, which is so ordered with leave of said defendant to further plea to said cause of action if it so desired, when counsel for said defendant stated in open court he was not authorized to represent said defendant further."

That then and there at said time the following order was entered by said Circuit Court of Chester County, in the State of Tennessee, to-wit:

"MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO. et al.

This cause came on to be heard on February 3rd, 1908, upon motion to dispose of the demurrer filed by the plaintiff to the plea in abatement of the Chicago Life Insurance Co., and after due consideration thereof, the Court is pleased to sustain said demurrer and to dismiss said plea in abatement. It is accordingly ordered by the Court that the said defendant, Chicago Life Insurance Co. answer the allegations and matters set out in plaintiff's declaration, to which action of the court the defendant Chicago Life Insurance Co. excepted, which exceptions are overruled by the Court.

Filed Feb. 3, 1908. C. L. Parrish."

27 That thereafter, on, to-wit, February 3rd, A. D. 1908, the following proceedings were had by said Circuit Court of Chester County in the State of Tennessee, to-wit:

"Thereupon the said defendants being solemnly called to come into open court as they were bound to do and defend said suit come not but make default. Thereupon a jury of good and lawful men, to-wit: M. E. Bishop, W. G. Gately, N. P. Ingraham, J. W. Butler, R. D. Murchison, B. Talley, B. F. Robertson, W. B. Summers, Whit Seaton, A. B. Clifford, J. N. Gibson and W. C. Thompson, who being duly empaneled sworn and charged to assess the damages claimed by plaintiff in her declaration upon their oath say that they find for plaintiff the face value of the policy, to-wit: The

sum of $1,250.00, with interest thereon for twelve months, amounting to the sum of $75.00, making the sum of $1,325.00, and they further find in her favor 15% of said amount to-wit: the sum of $198.75 for cost and expenses as provided by acts of 1901, making the total amount $1,523.75.

Thereupon the plaintiff moved the court for a new trial as to the amount of cost and expenses as found by them, to-wit the sum of $198.75, for the reason there is no evidence to support the said amount, the proof being that 25% would be a reasonable amount for attorneys' fees incurred by plaintiff in this cause which the Court is pleased to sustain, and which verdict is set aside and for nothing held, and thereupon another jury was summoned and said matters submitted to them, said jury, to-wit: Bob Mayfield, John Ellis, Jeff Cothren, Lee Melton, Tom Cothren, Whit Seaton, John McDonald, C. G. Hardeman, A. B. Fields, C. Parker, H. J. Alexander, and John Galbraith, being duly empaneled, sworn and charged to ascertain the amount of damages that plaintiff has sustained and entitled to recover, who upon their oath say that they find for the plaintiff the face of said policy, to-wit: the sum of $1,250.00 and interest on same for twelve months, amounting to $75.00, the further sum of $341.25 for cost and expenses incurred by plaintiff in this suit including attorneys' fees, making total amount of $1,666.25."

That thereafter on, to-wit, February 3rd, 1908, the following order was entered by said Circuit Court of Chester County in the State of Tennessee, to-wit:

28 "It is therefore the judgment of the Court that the plaintiff, Mrs. Bertha R. Cherry recover from defendants, Chicago Life Insurance Co., and the Federal Life Insurance Co. jointly and separately the sum of $1,666.25, and all the cost of this suit for which execution may issue."

That, thereafter, to-wit, on the 31st day of December, A. D. 1908, the said Chicago Life Insurance Company, by its attorney, Moreau P. Estes, sued out of the court of Civil Appeals of Tennessee, a writ of error to revise and correct the judgment entered against it in the Circuit Court of Chester County, and above set forth. That thereafter said Chicago Life Insurance Company perfected said writ of error, and thereafter on, to-wit, January 23, 1909, said Court of Civil Appeals of Tennessee, entered upon the records of said court the following judgment, to-wit:

#1, Chester. Law.

"CHICAGO LIFE INSURANCE CO. and THE FEDERAL LIFE INSURANCE CO.

vs.

Mrs. BERTHA R. CHERRY

This cause was heard upon the transcript of the record from the Circuit Court of Chester County, and it appearing to the Court that

in the judgment of the Court below there is no error, the same is in all things affirmed.

It is therefore ordered and adjudged that the defendant in error, Mrs. Bertha R. Cherry, have and recover of the Chicago Life Insurance Co. and the Federal Life Insurance Co. jointly and separately, the sum of One thousand six hundred sixty-six and 25/100 ($1,666.25) Dollars and the cost of the Court below and of them and Moreau P. Estes, security on writ of error bond the further sum of Ninety-five and 79/100 ($95.79) Dollars, interest on said judgment from the date of the rendition below to this date, to-
29 gether with the costs of the appeal, for all of which let execution issue.

Thereupon the Court adjourned until Monday morning at 9 o'clock.

R. M. BARTON, JR.
JNO. M. TAYLOR.
A. B. LAMB.
H. E. PALMER.
S. F. WILSON.

M. B. 2, page 31, Jan. 23, 1909."

That thereafter the Chicago Life Insurance Company by P. M. and Moreau P. Estes, its solicitors, filed with the Clerk of the Supreme Court of the State of Tennessee at Jackson, Tennessee, its certain petition for certiorari, the first paragraph of which reads as follows, to-wit:

"In the Supreme Court of the State of Tennessee, at Jackson.

CHICAGO LIFE INSURANCE CO. and FEDERAL LIFE INSURANCE CO.
vs.
BERTHA R. CHERRY.

Petition for Certiorari.

To the Honorable Supreme Court of the State of Tennessee:

Your petitioners, the Federal Life Insurance Company and the Chicago Life Insurance Company, do respectfully request that a writ of certiorari be issued by your court in this case removing these proceedings into this Supreme Court for the purpose of review of of Chester County and State of Tennessee, and the Court of Civil Appeals thereon. They allege as their grounds for the issuance of the said writ of certiorari the following";

That the remaining portion of said petition, with the exception of the last paragraph and conclusion, consists of a long argu-
30 ment and brief wherein the defendant, Chicago Life Insurance Company, argues and maintains that the Circuit Court of Chester County and State of Tennessee, and the Court of Civil Appeals of the State of Tennessee did not have jurisdiction over the person of said defendant, Chicago Life Insurance Company, and object to the judgments of said courts in sustaining the demurrer

to the plea in abatement of defendant, Chicago Life Insurance Company; that the concluding paragraphs of said petition are in the following words and figures, to-wit:

"Wherefore, your petitioners submit that the writ of certiorari should be granted by your Honorable Court and that this cause be reheard and the action of the lower Courts be overruled.

CHICAGO LIFE INSURANCE CO.,
FEDERAL LIFE INSURANCE CO.,
By P. M. & MOREAU P. ESTES, *Solicitors.*

P. M. Estes, being duly sworn, makes oath that he has read the foregoing petition for certiorari filed on behalf of the Federal Life and Chicago Life Insurance Companies, and that the statements therein made are true to the best of his knowledge and belief.

P. M. ESTES.

Sworn to and subscribed before me, this 17th day of April, 1909.
FRANK N. BORNSCH, JR.,
Notary Public. [SEAL.]

That thereafter, to-wit, on April 29, A. D. 1909, the following order was entered of record by the Supreme Court of Tennessee of the State of Tennessee, to-wit:—

31 Court of Civil Appeals.

#1, Chester. Law Docket.

"BERTHA CHERRY
vs.
CHICAGO LIFE INSURANCE CO.

The petition for certiorari filed in this cause by the defendant in error, to bring the cause to this court to review the judgment in the Court of Civil Appeals affirming the judgment of the Circuit Court is granted, and the case ordered to be placed upon the docket of this Court for hearing at this term.

Thereupon the court adjourned until tomorrow morning at 9:30 o'clock.

W. D. BEARD
M. M. NEIL
W. K. McALISTER
B. D. BELL.

M. B. 44, page 42-43, Apr. 29, 1909."

That thereafter, to-wit, on June 12, A. D. 1909, the following proceedings took place in said Supreme Court of Tennessee of the State of Tennessee to-wit:—

"JUNE 12, 1909.

Court met pursuant to adjournment. Present and presiding the Honorable W. D. Beard, Chief Justice, W. K. McAlister, M. M.

Neil, John K. Shields, and B. D. Bell, Associate Justices, when the following proceedings were had, to-wit:—

In the Supreme Court of Tennessee, at Jackson, Tennessee.

CHICAGO LIFE INSURANCE CO. and FEDERAL LIFE INSURANCE CO.
vs.
BERTHA R. CHERRY.

Be it remembered that this cause came on to be heard and was heard, by the Supreme Court of Tennessee, upon the petition filed by the plaintiffs in error for certiorari to review the judg-
32 ment of the Court of Civil Appeals heretofore rendered in this cause, assignment of errors, brief of counsel and the transcript of the record from the Circuit Court of Chester County, Tennessee, when the Court is of the opinion, that the Circuit Court of Chester County did have jurisdiction of the Chicago Life Insurance Co. and the Federal Life Insurance Company, and that they and each of them were properly before Court by due process of law, and that there was no error in the judgment of the Court of Civil Appeals dismissing the writ of error sued out by the said Chicago Life Insurance Co. and the Federal Life Insurance Co. seeking to review and reverse the judgment of the Circuit Court of Chester County, and the said judgment of the Court of Civil Appeals is in all things affirmed. It is therefore ordered, adjudged and decreed that the said writ of certiorari be dismissed and that the defendant in error, Bertha R. Cherry, have an recover from the Chicago Life Insurance Company and the Federal Life Insurance Company and Moreau P. Estes, Security on bond executed for said writ of error, all the costs incident to said writ of error, including the cost of said certiorari proceedings for which execution may issue.

And it further appearing to the Court that since the trial of said cause in the Court of Civil Appeals the original papers certified from the Circuit Court of Chester County, and being the policy sued upon in this cause, together with the application for said policy has been mislaid or misplaced, and that the said papers were by consent supplied, and are now filed in this cause, upon motion of defendant in error, it is ordered by the Court that said papers, or the original, if found, may be withdrawn from this record by leaving a true and correct copy of the same, and the Clerk of this Court will so certify the withdrawal of either the papers so supplied or the originals."

And the said plaintiff, Bertha R. Cherry says that the question of jurisdiction raised by said defendant, Chicago Life Insurance Company, by its plea secondly above pleaded, is the same and identical question of jurisdiction raised by said defendant, Chicago Life Insurance Company in the Circuit Court of Chester County in the State of Tennessee, and the Court of Civil Appeals of the State of Tennessee, and the Supreme Court of Tennessee of the State of Tennessee; and that by reason of all the facts hereinbefore
33 set forth, and by reason of the judgments of said Circuit Court of Chester County in the State of Tennessee, and the

Court of Civil Appeals of the State of Tennessee, and the Supreme Court of Tennessee of the State of Tennessee, the question of jurisdiction presented by the said Chicago Life Insurance Company in its plea secondly above pleaded, has been fully and completely adjudicated, and that by reason thereof, said defendant, Chicago Life Insurance Company, is estopped from questioning in this court the jurisdiction over the person of the Chicago Life Insurance Company of said Circuit Court of Chester County in the State of Tennessee, and the Court of Civil Appeals of the State of Tennessee, and the Supreme Court of Tennessee of the State of Tennessee.

And this the plaintiff is ready to verify by the said record; wherefore she prays judgment.

ATWOOD, PEASE & LOUCHS,
Attorneys for Plaintiff.

34 And on to-wit, on the 23rd day of January, A. D. 1912, a certain amended Replication to Defendants' 2nd Plea was filed in the office of the Clerk of said Court in words and figures following to-wit:

35 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gn. No. 277,253. Term No. 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

Amended Replication to Defendants' Second Plea, by Leave of Court First Had and Obtained.

And the plaintiff as to the plea of the defendant, Federal Life Insurance Company, a corporation, by it secondly above pleaded, says that she, the plaintiff, by reason of anything in that plea alleged ought not to be barred from having her aforesaid action, because she says that said defendant, Federal Life Insurance Company, is estopped from denying the jurisdiction of the Circuit Court of Chester County, in the State of Tennessee, and the court of Civil Appeals of the State of Tennessee, and the Supreme Court of Tennessee of the State of Tennessee, of the person of said defendant, Federal Life Insurance Company, because she says that heretofore on to-wit, the 24th day of June, A. D. 1907, one C. L. Parrish, then and there Clerk of the Circuit Court of Chester County in the State of Tennessee, issued and delivered to one B. F. Weir, then and there Sheriff of Chester County in the State of Tennessee, a certain summons in the following words and figures, to-wit:

"Summons.

Federal Life Insurance Company.

Mrs. Bertha R. Cherry
vs.
Chicago Life Ins. Co. et al.

"The State of Tennessee to the Sheriff of Chester County, Greeting:

You are hereby commanded to summon the Federal Life Insurance Company, a foreign corporation, if to be found in your county, to appear before the judge of our Circuit Court to be held for the County of Chester at the court house in the town of Hen-
36 derson on the first Monday in October next, then and there to answer Mrs. Bertha Ripman Cherry in an action of debt due by policy issued by the Chicago Life Insurance Company on the life of Rufus M. Cherry for her benefit, for the sum of twelve hundred and fifty ($1,250) dollars, and reinsured by the said Federal Life Insurance Company, and the further sum of five hundred ($500) dollars attorney's fees and interest to her damage eighteen hundred ($1,800) dollars. Herein fail not, and have you then and there this writ:

Witness, C. L. Parrish, clerk of our said court, at office, the first Mond-y in June, A. D. 1907.

C. L. PARRISH, *Clerk.*

Issued 24th day of June, 1907.

C. L. PARRISH, *Clerk.*"

That thereafter, to wit, on the 24th day of June, A. D. 1907, said sheriff of Chester county and State of Tennessee returned said summons, bearing the following endorsement, to wit:

"Executed as within directed by reading the same to G. G. Butler, agent of the Federal Life Insurance Company, or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued upon and who was the agent of the Chicago Life Insurance Company, and it being the agent of the Federal Life Insurance Company in the delivery of the policy sued upon and represented said corporation at the time.

This 24th day of June, 1907.

Form 21.

Filed June 28, 1907. B. F. Weir, Sheriff of Chester Co.; C. L. Parrish, Clerk."

That thereafter, to-wit, on the 27th day of June, A. D. 1907, Bertha Ripman Cherry, by her attorneys, Biggs & Spragins prepared and forwarded to one, Charles O. Loucks, of the City of Chicago and State of Illinois, a certain notice, in the following

words and figures, attached to which was a true and correct copy of the process issued in said suit, and hereinbefore more fully set forth, and the return of the officer indorsed thereon; also more fully hereinbefore set out, to-wit:

June 27, 1907.

"Mrs. Bertha R. Cherry
vs.
Chicago Life Ins. Co. & Federal Life Ins. Co.

Notice.

37 "To the Federal Life Insurance Company:

You are hereby notified that Mrs. Bertha R. Cherry has commenced suit against the Federal Life Insurance Co. and also the Chicago Life Insurance Co. in the Circuit Court of Chester county, Tennessee, to recover the sum of $1,250 for a policy of insurance issued by the Chicago Life Insurance Co. on the life of Rufus M. Cherry for her benefit, and reinsured by the Federal Life Insurance Co., and the further sum of $500 for attorney's fees and interest, making the sum sued for in her cause of action, $1,800, said writ issued in said suit is returnable the first Monday in October, 1907, at the court house in the town of Henderson, Chester county, Tennessee.

A true and correct copy of the process issued in said suit and the return of the officer endorsed thereon is hereto attached and marked Exhibit No. 1 as part of this notice.

This 27th day of June, 1907.

Mrs. BERTHA RIPMAN CHERRY,
By BIGGS & SPRAGINS,
Attorneys for Plaintiff."

That thereafter, to-wit, on the 29th day of June, A. D. 1907, said Charles O. Loucks left with one Charles A. Atkinson, then and there Vice-President of the Federal Life Insurance Co. in the City of Chicago and State of Illinois, said notice as aforesaid, and said true and correct copy of said process and said copy of said sheriff's return, and all of the same were lodged with said Charles O. Atkinson as said officer of said County, at the home office of said Federal Life Insurance Company in the Marquette Building in the City of Chicago and State of Illinois. That thereafter said Charles O. Loucks caused to be filed in the office of the Clerk of said Circuit Court of Chester County in the State of Tennessee his certain affidavit to notice, which is in the following words and figures, to-wit:

"EXHIBIT D."

Affidavit to Notice.

"MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO. & FEDERAL LIFE INSURANCE CO.

STATE OF ILLINOIS,
County of Cook, ss:

This day personally appeared before me, Albertine E. Hathaway, a Notary Public in and for said County and State, Charles O. Loucks, who makes oath in due form of law that as the attorney for Mrs. Bertha F. Cherry he lodged with the Federal Life Insurance Company, at its home office in Chicago, Illinois, notice of the suit commenced by Mrs. Bertha R. Cherry against the Chicago Life Insurance Co. and the Federal Life Insurance Co. in the Circuit Court of Chester County, Tennessee, and also a true and correct copy of the process issued in said cause with the officer's return thereon, a true and correct copy of said notice, and process of officer's return thereon, are marked exhibit No. 1 as part of this affidavit hereto attached. Said notice and process was on the 29th day of June, 1907, left with Charles O. Atkinson, who was Vice-President of the Federal Life Insurance Company, and the same was lodged with him as said officer of said Company at the Home Office of said Federal Life Insurance Company at Marquette Building in the City of Chicago, Illinois.

CHARLES O. LOUCKS.

38 Sworn to and subscribed before me this 29th day of June, 1907.

ALBERTINE E. HATHAWAY,
Notary Public.

[N. P. SEAL.]"

To which was then and there attached a true and correct copy of said notice and process, with officer's return thereon, marked Exhibit No. 1.

Plaintiff alleges that said service of process was in accordance with the statute laws of the State of Tennessee in such cases made and provided as to foreign corporations.

That thereafter she filed a declaration setting out her cause of action against said defendant and the defendant appeared as required by said summons and submitted to the jurisdiction of the court and on the 1st day of October, 1907, filed by its attorneys, Moreau P. Estes and P. M. Estes, in the Circuit Court of Chester County and State of Tennessee its certain plea in abatement challenging the jurisdiction of the court in the following words and figures, to-wit:—

"BERTHA R. CHERRY
v.
CHICAGO LIFE INS. CO.

Plea in Abatement of the Federal Life Insurance Co.

"The defendant for plea in abatement to the summons or writ in this cause and to this suit says:

The summons or writ shows that it was served upon one G. G. Butler, who was designated as agent of the Federal Life Insurance Company, or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued on. This is attempted service under sections 4545 and 4546 of Shannon's Code of this State, providing that service of process can be had upon a foreign corporation by service upon the agent who represented the corporation at the time of the transaction out of which the suit arose.

The defendant, Federal Life Insurance Company, states that the said Butler was not its agent at the time that this application for this policy was taken out, nor at the time that this policy was delivered. The said Butler has never been the agent of the Federal Life Insurance and the Federal Life Insurance Co. has never had any relation with said Butler in any way whatever.

The Federal Life Insurance Co. has never done business in this state and has never been licensed to do business in this state, and, therefore, could not have had an agent here who was authorized either to solicit applications or to deliver policies. For these reasons the defendant, Federal Life Insurance Co., prays that the writ or summons in this case be quashed and this suit abated.

MOREAU P. ESTES,
P. M. ESTES,
Att'ys for Deft."

39 STATE OF TENNESSEE,
County of Davidson:

Moreau P. Estes makes oath that the statements in the foregoing plea are true in substance and in fact.

MOREAU P. ESTES.

FRANK N. BOENSCH, JR.,
[N. P. SEAL.] *Notary Public.*

Filed Oct. 1st, 1907. C. L. Parrish, Clerk."

That thereafter on to-wit, January 28, 1908, the plaintiff, Bertha R. Cherry, by her attorneys, Biggs & Spragins, filed with the Circuit Court of Chester County and State of Tennessee, a certain plea of plaintiff to defendant, Federal Life Insurance Company's plea in abatement in the following words and figures, to-wit:

"BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO.

Plea of Plaintiff to Defendant Federal Life Insurance Company's Plea in Abatement.

"Plaintiff denies the allegation in the plea in abatement of the Federal Life Insurance Co. that G. G. Butler was not the agent for the said Federal Life Insurance Co. when the policy upon which this suit is based was issued and delivered to the deceased.

She denies the allegation that the said Butler has never been the agent of the Federal Life Insurance Co. and never had any relation with the said company whatever.

She denies the allegation that said company has never done business in this state, but plaintiff alleges that the policy issued in this case was turned over to the said Butler by the Federal Life Insurance Company to be delivered to Rufus M. Cherry, whose life was insured, and that said Butler did deliver and turn over said policy to him as the agent for the said Federal Life Insurance Co., and that the said Federal Life Insurance Co. has many policies now outstanding in the State of Tennessee, on which premiums are being paid to the Federal Life Insurance Company, and that the said company is doing life insurance business in the State of Tennessee.

BRIGGS & SPRAGINS,
Attorneys for Plaintiff."

40 Filed Jan. 28th, 1908. C. L. Parrish, Clk."

That thereafter, to-wit, on February 3, A. D. 1908, the following proceedings were had by said Circuit Court of Chester County in the State of Tennessee, to-wit:

"The cause was further heard upon the plea in abatement filed by the Federal Life Insurance Co., the replication of plaintiff thereto, and issue joined thereon. The same being submitted to the court without the intervention of a jury, when after hearing proof introduced and argument of counsel, the court finds the issues in favor of the plaintiff and overrules the said plea in abatement and gives leave to defendant to plead to said cause of action, if it so desired, when counsel for defendant stated in open court that he was not authorized to further represent the defendants."

That thereafter on, to-wit, February 3, 1908, the following order was entered by said Circuit Court of Chester County in the State of Tennessee, to-wit:

No. 514.

"Mrs. Bertha R. Cherry
vs.
Chicago Life Insurance Co. et al.

Dismissing Plea in Abatement and Overruling Motion for New Trial.

"This cause came on to be heard by the court on February 3, 1908, a former day of the present term, upon the plea in abatement of the defendant, Federal Life Insurance Co., the plaintiff's replication thereto, and the rejoinder thereto, and after hearing the evidence and argument of counsel the court acting without the intervention of a jury finds the issues in favor of the plaintiff and is pleased to dismiss said plea in abatement and to order that the defendant, Federal Life Insurance Company answer the allegations and matters set out in plaintiff's declaration, the defendant, Federal Life Insurance Co., excepts to the action of the court to all of such matters and moved the court for a new trial as to such matters, which exceptions and motion for a new trial are overruled by the court. Thereupon the defendant, Federal Life Insurance Co. filed its bill of exceptions, setting out all matters and evidence considered by the court in finding said issues for plaintiff which bill of exceptions is signed and sealed by the court and ordered to be filed and made a part of the record.

D. W. HERRING,
Sp. Judge."

41 Filed Feb. 3, 1908, C. L. Parrish, Clerk."

That thereafter on, to-wit, February 3rd, A. D. 1908, the following proceedings were had by said Circuit Court of Chester County in the State of Tennessee, to-wit:

Thereupon on said defendants being solemnly called to come into open court as they were bound to do and defend said suit come not but made default. Thereupon a Jury of good and lawful men, to wit: M. E. Bishop, W. G. Gately, N. P. Ingraham, J. W. Butler, R. D. Murchison, B. Talley, B. F. Robertson, W. B. Sumner, Whit Seaton, A. B. Clifford, J. N. Gibson and W. C. Thompson, who being duly empaneled, sworn and charged to assess the damages claimed by plaintiff in her declaration upon their oath say that they find for plaintiff the face value of the policy, to wit: the sum of $1,250 with interest thereon for twelve months, amounting to the sum of $75 making the sum of $1,325, and they further find in her favor 15 per cent of said amount, to wit: the sum of $198.75 for cost and expenses as provided by acts of 1901, making the total amount $1,523.75.

Thereupon the plaintiff moved the court for a new trial as to the amount of cost and expenses as found by them, to wit: the sum of $198.75, for the reason there is no evidence to support the said amount, the proof being that 25 per cent would be a reasonable

amount for attorneys' fees incurred by plaintiff in this cause which the court is pleased to sustain and which verdict is set aside and for nothing held, and thereupon another jury was summoned and said matters submitted to them, said jury, to wit: Bob Mayfield, John Ellis, Jeff Cothren, Lee Molton, Tom Cothren, Whit Seaton, John McDonald, C. C. Hardeman, A. B. Feilds, C. Parker, H. J. Alexander, and John Galbraith being duly empaneled, sworn and charged to ascertain the amount of damages that plaintiff has sustained and entitled to recover, who upon their oath say that they find for the plaintiff the face of said policy, to wit, the sum of $1,250 and interest on same for twelve months amounting to $75, the further sum of $341.25 for cost and expenses incurred by plaintiff in this suit including attorneys' fees making total amount of $1,666.25.

That thereafter on, to wit, February 3, 1908, the following order was entered by said Circuit Court of Chester county in the State of Tennessee, to wit:

"It is therefore the judgment of the court that the plaintiff, Mrs. Bertha R. Cherry, recover from defendants, Chicago Life Insurance Co. and the Federal Life Insurance Co., jointly and separately the sum of $1,666.25 and all the costs of this suit for which execution may issue."

42 That thereafter to-wit, on the 31st day of December A. D. 1908, the said Federal Life Insurance Company by its attorney, Moreau P. Estes, sued out of the Court of Civil Appeals of Tennessee, a writ of error to revise and correct the judgment entered against it in the Circuit Court of Chester County, and above set forth. That thereafter said Federal Life Insurance Company perfected said writ of error, and thereafter on, to-wit, January 23, 1909, said Court of Civil Appeals of Tennessee, entered upon the records of said Court the following judgment, to-wit:

#1, Chester, Law.

"CHICAGO LIFE INSURANCE CO. and THE FEDERAL LIFE INSURANCE CO.

vs.

Mrs. BERTHA R. CHERRY.

This cause was heard upon the transcript of the record from the Circuit Court of Chester County, and it appearing to the Court that in the judgment of the Court below there is no error, the same is in all things affirmed.

It is therefore ordered and adjudged that the defendant in error, Mrs. Bertha R. Cherry, have and recover of the Chicago Life Insurance Co. and the Federal Life Insurance Co. jointly and separately the sum of One Thousand and six hundred sixty-six and 25/100 ($1665.25) Dollars and the cost of the Court below and of them and Moreau P. Estes, security on writ of error bond, the further sum of Ninety-five and 79/100 ($95.79) dollars, interest on said judgment from the date of the rendition below to this date, together with the costs of the appeal, for all of which let execution issue.

Thereupon the Court adjourned until Monday morning at 9 o'clock.

R. M. BARTON, JR.,
JNO. M. TAYLOR,
A. B. LAMB.
H. E. PALMER.
S. F. WILSON.

M. B. 2, Page 31, Jan. 23, 1909."

That thereafter the Federal Life Insurance Company by P. M. and Moreau P. Estes, its solicitors, filed with the Clerk of the Supreme Court of the State of Tennessee at Jackson, Tennessee, its certain Petition for certiorari, the first paragraph of which reads as follows, to-wit:

Petition for Certiorari.

"In the Supreme Court of the State of Tennessee, at Jackson.

CHICAGO LIFE INSURANCE CO. and FEDERAL LIFE INSURANCE CO.
vs.
BERTHA R. CHERRY.

To the Honorable Supreme Court of the State of Tennessee:

Your petitioner, the Federal Life Insurance Company and the Chicago Life Insurance Company, do respectfully request that a writ of certiorari be issued by your court in this case removing these proceedings into this Supreme Court for the purpose of review of the erroneous action of the trial court and of the Court of Civil Appeals thereon. They allege as their grounds for the issuance of the said writ of certiorari the following:" that the remaining por-
43 tion of said petition, with the exception of the last paragraph and conclusion, consists of a long argument and brief, wherein the defendant, Federal Life Insurance Company, argues and maintains that the Circuit Court of Chester County and State of Tennessee, and the Court of Civil Appeals of the State of Tennessee did not have jurisdiction over the person of said defendant, Federal Life Insurance Company, and object to the judgments of said courts in overruling said plea in abatement of the defendant, Federal Life Insurance Company; that the concluding paragraphs of said petition are in the following words and figures, to-wit:

"Wherefore, your petitioners submit that the writ of certiorari should be granted by your Honorable Court and that this cause be reheard and the action of the lower courts be overruled.

CHICAGO LIFE INSURANCE CO.
FEDERAL LIFE INSURANCE CO.
By P. M. & MOREAU P. ESTES,
Solicitors.

P. M. Estes, being duly sworn makes oath that he has read the foregoing petition for certiorari filed on behalf of the Federal Life and Chicago Life Insurance Companies, and that the statements therein made are true to the best of his knowledge and belief.

P. M. ESTES.

Sworn to and subscribed before me, this 17th day of April, 1909.

FRANK N. BORNSCH, JR.,
Notary Public [SEAL.]."

That thereafter, to-wit, on April 29, A. D., 1909, the following order was entered of record by the Supreme Court of Tennessee of the State of Tennessee, to-wit:

1, Chester Law Docket Court of Civil Appeals.

"BERTHA CHERRY
vs.
CHICAGO LIFE INSURANCE CO.

The petition for certiorari filed in this cause by the defendant in error, to bring the cause to this court to review the judgment in the Court of Civil Appeals affirming the judgment of the Circuit Court is granted, and the case ordered to be placed upon the docket of this Court for hearing at this term.

Thereupon the Court adjourned until tomorrow morning at 9:30 o'clock.

W. D. BEARD.
M. M. NEIL.
W. K. McALISTER.
B. D. BELL.

M. B. 44, page 42-43, Apri. 29, 1909."

That thereafter, to-wit, on June 12, A. D., 1909, the following proceedings took place in said Supreme Court of Tennessee of the State of Tennessee, to-wit:

44

JUNE 12, 1909.

Court met pursuant to adjournment. Present and presiding the Honorable W. D. Beard, Chief Justice, W. K. McAlister, M. M. Neil, John K. Shields, and B. D. Bell, Associate Justices, when the following proceedings were had, to-wit:

In the Supreme Court of Tennessee, at Jackson, Tennessee.

CHICAGO LIFE INSURANCE and FEDERAL LIFE INSURANCE CO.
vs.
BERTHA R. CHERRY.

Be it remembered that this cause came on to be heard and was heard, by the Supreme Court of Tennessee, upon the petition filed

by the plaintiffs in error for certiorari to review the judgment of the Court of Civil Appeals heretofore rendered in this cause, assignment of errors, brief of counsel and the transcript of the record from the Circuit Court of Chester County, Tennessee, when the Court is of the opinion that the Circuit Court of Chester County did have jurisdiction of the Chicago Life Insurance Co. and the Federal Life Insurance Company, and that they and each of them were properly before Court by due process of law, and that there was no error in the judgment of the Court of Civil Appeals dismissing the writ of error sued out by the said Chicago Life Insurance Co. and the Federal Life Insurance Co. seeking to review and reverse the judgment of the Circuit Court of Chester County, and the said judgment of the Court of Civil Appeals is in all things affirmed. It is therefore ordered, adjudged and decreed that the said writ of certiorari be dismissed and that the defendant in error, Bertha R. Cherry, have and recover from the Chicago Life Insurance Company and the Federal Life Insurance Company and Moreau P. Estes, security on bond executed for said writ of error, all the costs incident to said writ of error, including the cost of said certiorari proceedings for which execution may issue.

And it further appearing to the Court that since the trial of said cause in the Court of Civil Appeals the original papers certified from the Circuit Court of Chester County, and being the policy sued upon in this cause, together with the application for said policy has been mislaid or misplaced, and that the said papers were by consent supplied and are now filed in this cause, upon motion of defendant in error, it is ordered by the court that said papers, or the original, if found, may be withdrawn from this record by leaving a true and correct copy of the same, and the Clerk of this Court will so certify the withdrawal of either the papers so supplied or the originals."

And the plaintiff, Bertha R. Cherry, says that the question of jurisdiction raised by said defendant, Federal Life Insurance Company, by its plea secondly above pleaded, is the same and identical question of jurisdiction raised by said defendant, Federal Life Insurance Company in the Circuit Court of Chester County in the State of Tennessee, and the Court of Civil Appeals of the State of Tennessee, and the Supreme Court of Tennessee of the State of Tennessee; and that by reason of all the facts hereinbefore set forth, and by reason of the judgment of said Circuit Court of Chester County in the State of Tennessee, and the Court of Civil Appeals of the State of Tennessee, and the Supreme Court of Tennessee
45 of the State of Tennessee, the question of jurisdiction presented by the said Federal Life Insurance Company in its plea secondly above pleaded, has been fully and completely adjudicated, and that by reason thereof, said defendant, Federal Life Insurance Company, is estopped from questioning in this court the jurisdiction over the person of the Federal Life Insurance Company of said Circuit Court of Chester County in the State of Tennessee, and the Court of Civil Appeals of the State of Tennessee and the Supreme Court of Tennessee of the State of Tennessee.

And this the plaintiff is ready to verify by the said record; wherefore she prays judgment.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

And afterwards to-wit, on the 29th day of March A. D. 1913 a certain Motion and Demurrer was filed in the office of the Clerk of said Court, in words and figures following to-wit.

46 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 277,253. Term No. 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

Motion of defendant, Federal Life Insurance Company, to strike from the files the amended replication to defendant's second plea filed by the plaintiff herein January 23rd, 1912.

Now comes the defendant, Federal Life Insurance Company by Charles A. Atkinson and Chilton P. Wilson, its attorneys, and moves the court to strike from the files and the record herein, the amended replication to defendant's second plea filed by the plaintiff January 23rd, 1912.

Date, Chicago, February 16th, 1912.

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Federal Life Insurance Co.

47 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 277,253. Term No. 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE CO. et al.

Demur- of Federal Life Insurance Company to Amended Replication to Defendant's Second Plea.

And the defendant, Federal Life Insurance Company, by Charles A. Atkinson and Chilton P. Wilson, its attorneys, comes and defends when etc., and says that the said amended replication to de-

fendant's second plea and the matters therein contained in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain her aforesaid action and that it the defendant is not bound by law to answer the same, and this it is ready to verify:

Wherefore, for want of a sufficient replication in this behalf, the defendant, Federal Life Insurance Company prays judgment and that the plaintiff may be barred from maintaining her aforesaid action.

And for cause of demur, the defendant, Federal Life Insurance Company shows to the court the following: that the said matters and things in said amended replication above set forth are matters and things which the plaintiff is obliged to allege in her said declaration and which said matters and things in said replica-
48 tion the plaintiff is obliged to prove under her said declaration.

Chicago, February 16, 1912.

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Federal Life Insurance Co.

STATE OF ILLINOIS,
County of Cook, ss:

Chilton P. Wilson, being first duly sworn, says he is one of the attorneys for Federal Life Insurance Company, that the above and foregoing demur- to the amended replication of the plaintiff is not interposed for delay.

CHILTON P. WILSON.

Subscribed and sworn to before me this 19th day of February, A. D. 1912.

[SEAL.] OTIS H. WALDO, JR.,
Notary Public.

We, Charles A. Atkinson and Chilton P. Wilson, attorneys for said Federal Life Insurance Company, hereby certify that in our opinion the above and foregoing demur- is well taken and interposed in law.

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Federal Life Insurance Co.

49 And afterwards to-wit, on the 25th day of April A. D. 1913 a certain Motion and Demurrer was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 8496.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. et al.

Motion of Defendant Chicago Life Insurance Company to Strike from the Files the Amended Replication to Defendant's Second Plea Filed by the Plaintiff Herein January 23rd, 1912.

Now comes the defendant, Chicago Life Insurance Company by Herbert S. Duncombe and Louis J. Behan, its attorneys, and moves the court to strike from the files and the record herein, the amended replication to defendant's second plea filed by the plaintiff January 23rd, 1912.

Date, Chicago, February 16th, 1912.

DUNCOMBE & BEHAN,
Attorneys for Chicago Life Insurance Co.

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 8496.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. et al.

Demurrer of Chicago Life Insurance Company to Amended Replication to Defendant's Second Plea.

50 And the defendant, Chicago Life Insurance Company, by Herbert S. Duncombe and Louis J. Behan, its attorneys, comes and defends when etc., and says that the said amended replication to defendant's second plea and the matters therein contained in manner and form as the same are above set forth, are not sufficient in law for the plaintiff to maintain her aforesaid action and that it the defendant is not bound by law to answer the same, and this it is ready to verify:

Wherefore, for want of a sufficient replication in this behalf, the defendant, Chicago Life Insurance Company prays judgment and that the plaintiff may be barred from maintaining her aforesaid action.

And for cause of demur-, the defendant, Chicago Life Insurance

Company shows to the court the following: that the said matters and things in said amended replication above set forth are matters and things which the plaintiff is obliged to allege in her said declaration and which said matters and things in said replication the plaintiff is obliged to prove under her said declaration.

Chicago, February 16, 1912.

DUNCOMBE & BEHAN,
Attorneys for Chicago Life Insurance Co.

STATE OF ILLINOIS,
County of Cook, ss:

Louis J. Behan, being first duly sworn, says he is one of the attorneys for Chicago Life Insurance Company, that the above and foregoing demur- to the amended replication of the plaintiff is not interposed for delay.

LOUIS J. BEHAN.

Subscribed and sworn to before me this 25 day of February, A. D. 1912.

SAMUEL G. HAMBLIN,
Notary Public.

We, Herbert S. Duncombe and Louis J. Behan, attorneys for said Chicago Life Insurance Company, hereby certify that in our opinion the above and foregoing demur- is well taken and interposed in law.

DUNCOMBE & BEHAN,
Attorneys for Chicago Life Insurance Co.

51 And afterwards to-wit, on the 22nd day of September, A. D. 1913, the following proceedings were had and entered of record in said Court to-wit.

Now on this day it is ordered that said cause be and is hereby passed to be taken up on five days' notice.

And afterwards to-wit, on the 23d day of September, A. D. 1913, the following proceedings were had and entered of record in said Court to-wit.

No. 277,253.

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. & FEDERAL LIFE INSURANCE CO.

Debt.

This cause coming on to be heard upon the demurrer to the plaintiff's replication filed herein after arguments of counsel and due deliberation by the court said demurrer is overruled and it is ordered that the defendant's motion to strike said replication from the files be and is hereby also overruled and denied. It is further ordered

that leave be and is hereby given the defendants Federal Life Insurance Co. and Chicago Life Insurance Co. to reply thereto within three days from this date and it is ordered that the motion of said defendants that the plaintiff file a copy of the instrument sued on be and is hereby overruled and denied.

And afterwards to-wit, on the 26th day of September, A. D. 1913, a certain Rejoinder to 2nd Plea was filed in the office of the Clerk of said Court, in words and figures following, to-wit:

52 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 1444.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

Rejoinder of Federal Life Insurance Company to Amended Replication to Defendant's Second Plea.

And the defendant, Federal Life Insurance Company, as to the said amended replication of the plaintiff to defendant's second plea, says that the plaintiff ought not, by reason of anything by her in that amended replication alleged, to have or maintain her aforesaid action thereof against it, the said Federal Life Insurance Company, because it says that neither the said C. G. Butler nor the said Chicago Life Insurance Company, mentioned in said amended replication as agent of or representing the said Federal Life Insurance Company, had any right, power or authority to act as agent for or represent the said Federal Life Insurance Company, and that neither of the said supposed attorneys mentioned in said replication as representing the said Federal Life Insurance Company had any right, power or authority to enter the appearance of said Federal Life Insurance Company to give the Circuit Court of Chester County, Tennessee, or the Court of Civil Appeals or the Supreme Court of Tennessee, any jurisdiction of any kind or nature over the person of said Federal Life Insurance Company, and that neither of said Tennessee courts had jurisdiction over the person of said Federal Life Insurance Company.

This defendant, Federal Life Insurance Company, further says that it did not at any time submit to the jurisdiction of either of said Tennessee courts and that neither of said Tennessee courts had jurisdiction, power or authority to render any judgment against the said Federal Life Insurance Company.

And of this the defendant, Federal Life Insurance Company, puts itself upon the country.

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Defendant Federal Life Insurance Company.

53 And afterwards to-wit, on the 2nd day of October A. D. 1913 a certain Rejoinder to Amended Replication was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253.

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY.

And the said Chicago Life Insurance Company, by Duncombe & Behan, its attorneys, as to the said amended replication of the plaintiff to defendant's second plea, says that by reason of anything in the said replication and amended replication heretofore filed by said plaintiff, the said Bertha R. Cherry, plaintiff, ought not to have or maintain her aforesaid action against it, the said Chicago Life Insurance Company, because, it says that the writ or summons set forth in said replication shows upon its face that it was never served upon the Insurance Commissioner of the State of Tennessee by the Sheriff of Davidson County, Tennessee, or by any other officer, but that the service of said process was acknowledged on behalf of this defendant by the said Insurance Commissioner; that the Act of 1895, Chapter 160, Section 9, Subsection 3, of the Laws of the State of Tennessee, require a foreign insurance company to file a Power of Attorney with said Insurance Commissioner, constituting said Commissioner an agent upon whom process may be served, and does not authorize the Commissioner of Insurance to acknowledge service of process on behalf of foreign insurance companies, but expressly provides that such process must be served upon such commissioner by the proper officer of the county in which the said Commissioner may have this office; and that this defendant was a corporation organized and doing business under the laws of the State of Illinois, was not licensed to nor was it doing business in the State of Tennessee, and that it was not served with process in said alleged suit, and did not acknowledge or accept, nor did it authorize anyone for it to acknowledge
54 or accept service of process in said suit; that neither the Circuit Court of Chester County, Tennessee, nor the Court of Civil Appeals of Tennessee, nor the Supreme Court of the State of Tennessee, at any time have or acquired jurisdiction over the person of this defendant, in manner and form as by the said replication and amended replication alleged.

And of this the said Chicago Life Insurance Company, defendant, puts itself upon the country.

CHICAGO LIFE INSURANCE COMPANY,
By —— ——, *Its Attorneys.*

55 And afterwards to-wit, on the 10th day of October A. D. 1913 a certain Affidavit was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 1444.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY.

Vernon R. Loucks being first duly sworn, deposes and says that he is one of the attorneys for the plaintiff in the above entitled suit at law, now pending in said court, and that this affiant verily believes that the trial of said suit will not occupy more than one hour's time.

VERNON R. LOUCKS.

Subscribed and sworn to before me this 10th day of October, A. D. 1913.

BESSIE DOYLE,
Notary Public.

And afterwards to-wit, on the 13th day of November A. D. 1913 a certain Replication was filed in the office of the Clerk of said Court, in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

And the plaintiff, as to the plea of the defendant, Federal Life Insurance Company, a corporation, by it first above pleaded, says that she, the plaintiff, by reason of anything in that plea
56 alleged, ought not to be barred from having her aforesaid action, because she says that there is such record of the said recovery remaining in the said Circuit Court of Chester County, in the State of Tennessee, and the Court of Civil Appeals of the State of Tennessee, and the Supreme Court of Tennessee, of the State of Tennessee, as she has above in said declaration alleged. And this

the plaintiff is ready to verify by the said record, etc., and she prays that the same may be seen and inspected by the court here, etc.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

And the plaintiff, as to the plea of the defendant, Federal Life Insurance Company, a corporation, by it thirdly above pleaded, says that she, the plaintiff, by reason of anything in that plea alleged, ought not to be barred from having her aforesaid action, because she says that the said recoveries in her said declaration mentioned were not recoveries in whole or in part on and for a penalty, and were not to enforce a penal law of the State of Tennessee. And of this the plaintiff puts herself upon the country, etc.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.

And afterwards to-wit, on the 24th day of November, A. D. 1913 the following proceedings were had and entered of record in said Court to-wit:

No. 277,253.

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. AND FEDERAL LIFE INSURANCE CO.

Debt.

Now on this day it is ordered that the defendants' motion to strike said cause from the short cause calendar of this Court be and is hereby overruled and denied, to which the defendants except and it is further ordered that the defendants' motion for an order on the plaintiff to file herein a copy of the instrument sued on be and is hereby overruled and denied; and

57 This cause being called for trial come the parties to this suit by their attorneys respectively and issues being joined it is ordered that a jury come whereupon come the jurors of a jury of good and lawful men towit: Wm. E. Hanson, Ernest Rehwoldt, George L. Benke, John O'Brien, William A. Olson, Ryland B. Reeves, Edward McCrane, Ernest W. Teagle, Wm. Hurson, Jr., Fred'k W. Janett, Chas. W. Relly and E. C. Wilmore, who being duly elected, tried and sworn, well and truly to try the issues joined herein and a true verdict render according to the evidence, after hearing all the evidence adduced say: We the jury find the issues for the plaintiff; we find the debt to be the sum of Eighteen Hundred and One Dollar and Fifty Cents and assess the plaintiff's damages at the sum of Four Hundred and Twenty-five Dollars and Eighty-two cents.

Whereupon the defendants each enter herein their motion and joint motion for a new trial in said cause after arguments of counsel

and due deliberation by the Court said motions are overruled and a new trial denied, to which the defendants except.

Thereupon the defendants enter herein their motion in arrest of judgment which motion is also overruled, to which the defendants except.

On motion of defendant's attorney it is ordered that leave be and is hereby given the defendants to file their written motion for a new trial in said cause and also their motion in arrest of judgment nunc pro tunc as of November Twenty-Fourth A. D. 1913.

Therefore it is considered by the Court that the plaintiff do have and recover of and from the defendants her said debt of Eighteen Hundred and One Dollar- and Fifty Cents and her said damages of Four Hundred and Twenty-five Dollars and Eighty-two cents in form as aforesaid by the jury found due and assessed together with her costs and charges in this behalf expended and have execution therefor, to which the defendants except.

Whereupon the defendants, Chicago Life Insurance Company and Federal Life Insurance Company having entered their exceptions herein jointly pray an appeal from the judgment of this Court to the February Term of the Supreme Court of the State of Illinois which is allowed upon filing their appeal bond herein in the sum of Twenty-six Hundred Dollars to be approved by the Court within thirty days from this date and leave given the defendants to file their bill of exceptions herein within sixty days from this date.

58 And afterwards to-wit, on the 24th day of November A. D. 1913 a certain verdict was filed in the office of the Clerk of said Court, in words and figures following, to-wit.

We, the Jury find the issues for the plaintiff and we find the amount of the debt to be $1,801.50 Dollars and we the Jury assess the plaintiff's damages at the sum of $425.82 Dollars.

E. W. GEYLE, *Foreman.*

And afterwards to-wit, on the 13th day of December, A. D. 1913 the following proceedings were had and entered of record in said Court to-wit.

No. 277,253.

Mrs. Bertha R. Cherry
vs.
Chicago Life Insurance Co. and Federal Life Insurance Co.

Debt.

This day comes the defendants to this suit by their attorneys and present to the Court their appeal bond to the Appellate Court which appeal bond is duly approved and filed by the Court.

And afterwards to-wit, on the 13th day of December A. D. 1913 a certain Appeal Bond was filed in the office of the Clerk of said Court, in words and figures following to-wit:

Appeal Bond, Appellate Court.

Know all men by these presents, that we Chicago Life Insurance Company and Federal Life Insurance Company, both of Chicago, Illinois and National Surety Company, of New York, are held and firmly bound unto Bertha R. Cherry, of Henderson, Chester County, State of Tennessee, in the penal sum of Two Thousand six hundred and no/100 ($2,600.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents.

Witness our hands and seal this ninth day of December, A. D. 1913.

59 The condition of the above obligation is such, that whereas the said Bertha R. Cherry did, on the 24th day of November, A. D. 1913 in the Superior Court of Cook County, in the State aforesaid, and of the November Term thereof, A. D. 1913, recover a judgment against the above bounden Chicago Life Insurance Company and Federal Life Insurance Company, for the sum of Two Thousand, Two Hundred and twenty-seven Dollars and forty-one Cents, besides costs of suit; from which said judgment of the said Superior Court of Cook County, the said Chicago Life Insurance Company and Federal Life Insurance Company have prayed for and obtained an appeal to the Appellate Court, within and for the First District in said State.

Now therefore, if the said Chicago Life Insurance Company and Federal Life Insurance Company shall duly prosecute their said appeal with effect, and moreover pay the amount of the judgment, costs, interest and damages rendered, and to be rendered, against them in case the said judgment shall be affirmed in said Appellate Court, then the above obligation to be void, otherwise to remain in full force and virtue.

CHICAGA LIFE INSURANCE COMPANY,
LA VERNE NOYES, (Sgn.) [SEAL.]
President.
W. J. CARPENTER, *Secretary.* [SEAL.]
FEDERAL LIFE INSURANCE COMPANY,
By ISAAC MILLER HAMILTON, [SEAL.]
President.
T. W. APPLEBY, *Secretary.*
NATIONAL SURETY COMPANY, [SEAL.]
By JAMES FAWKNER,
Resident Vice President.

Approved:
C. N. GOODWIN, *J.*

Attest:
EMIL L. LEDERER,
Resident Assistant Secretary.

[Endorsed:] Gen. No. —. Superior Court of Cook County. —— —— vs. —— ——. Appeal Bond. Appellate Court.

60 And afterwards to-wit, on the 22nd day of December, A. D. 1913 the following proceedings were had and entered of record in said Court, to-wit.

No. 277,253.

Mrs. Bertha R. Cherry
vs.
Chicago Life Insurance Co. and Federal Life Insurance Co.

Debt.

This day comes the defendants to this suit by their attorneys and present to the Court their bill of exceptions for approval which bill of exceptions is duly approved, signed and sealed by the Court.

And afterwards to-wit, on the 22nd day of December A. D. 1913 a certain Bill of Exceptions was filed in the office of the Clerk of said Court, in words and figures following to-wit.

State of Illinois,
County of Cook:

In the Superior Court of Cook County.

Bertha R. Cherry
vs.
Federal Life Insurance Company and Chicago Insurance Company.

Witnesses.	Direct.	Cross.	R. D.	R. C.	Re re-D.	Re re-C.
Exhibit 1	26					
Charles A. Atkinson..	29					
Samuel G. Hamblen..	34					

Filed Dec. 22 1913. Richard J. McGrath, Clerk, per B. F. L.

61 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE CO., a Corporation, and CHICAGO LIFE INSURANCE CO., a Corporation.

Bill of Exceptions.

Be it remembered that heretofore on, to-wit, March 3, 1910 and from time to time thereafter the following proceedings were had in the above case; a notice served on plaintiff's counsel was filed in the above entitled cause, which notice is in words and figures as follows:

62 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE CO. et al.

To Atwood, Pease & Louks, Duncombe & Evans, attorneys:

You are hereby notified that we shall on Thursday the 3rd day of March, A. D. 1910, before his Hon. Judge Kavanagh, in the room usually occupied by him as a court room on the opening of court on said day move the court:

For an order on the plaintiff to file a bond as security for costs because of the non residence of the plaintiff.

We shall also move the court for an order on the plaintiff to file a copy of the account sued upon.

We shall also move the court that the time within which Federal Life Ins. Co., may plead, answer or demur to the declaration be extended ten days beyond the time in which the copy of the account sued upon is to be filed.

At which time and place you may appear if you see fit.

Chicago, March 1st, A. D. 1910.

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Federal Life Ins. Co.

Copy of the above notice received this 2nd day of March, A. D. 1910.

ATWOOD, PEASE & LOUCKS.

63 And thereafter and in pursuance of said notice and on March 28, A. D. 1910, a motion was made by the defendants in pursuance of said notice for an order on the plaintiff to file a copy of the instrument sued on, which said motion was made before the Hon. Marcus Kavanaugh, one of the judges of said court. Thereupon on said March 28, A. D. 1910, the Hon. Marcus Kavanaugh entered an order denying said motion of the defendants' and which said order so entered is as follows:

Now on this day it is ordered that the defendants' motion for a rule on the plaintiff to file copy of instrument sued on, be and is hereby overruled and denied, and on motion of plaintiff's attorney it is ordered that the defendants be and are hereby required to plead to the plaintiff's declaration filed herein within thirty days from this date.

To the entry of which order and the ruling of the court thereon denying the motion of said Federal Life Insurance Company and the said Chicago Life Insurance Company, the said Federal Life Insurance Company and Chicago Life Insurance Company by their respective counsel then and there duly excepted.

And thereafter and on January 23, A. D. 1912, the plaintiff filed in said cause an amended replication to the second plea of the defendant, Federal Life Insurance Company and an amended replication to the second plea of defendant, Chicago Life Insurance Company.

And thereafter the defendants, Federal Life Insurance Company and Chicago Life Insurance Company, respectively, filed their respective motions in said cause, which said motions were in words and figures as follows:

64 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 277,253. Term No. 8496.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE CO. et al.

Motion of defendant, Federal Life Insurance Company, to strike from the files the amended replication to defendant's second plea filed by the plaintiff herein January 23rd, 1912.

Now comes the defendant, Federal Life Insurance Company by Charles A. Atkinson and Chilton P. Wilson, its attorneys, and moves the court to strike from the files and the record herein, the amended replication to defendant's second plea filed by the plaintiff January 23rd, 1912.

Date, Chicago, February 16th, 1912.

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Federal Life Insurance Co.

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 277,253. Term No. 8496.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. et al.

Motion of defendant, Chicago Life Insurance Company, to strike from the files the amended replication to defendant's second plea filed by the plaintiff herein January 23rd, 1912.

65 Now comes the defendant, Chicago Life Insurance Company by Herbert S. Duncombe and Louis J. Behan, its attorneys, and moves the court to strike from the files and the record herein the amended replication to defendant's second plea filed by the plaintiff January 23rd, 1912.

Date, Chicago, February 16th, 1912.

DUNCOMBE & BEHAN,
Attorneys for Chicago Life Insurance Co.

And thereafter and on the 23rd day of September, A. D. 1913, the defendants, Federal Life Insurance Company and Chicago Life Insurance Company, respectively, also moved the court for an order upon the plaintiff to file with his said declaration a copy of the instrument sued on as required by section 32, chapter 110 of the Revised Statutes of the State of Illinois.

And thereafter and on September 23, A. D. 1913, the said motions of the defendants to strike the amended replications from the files, and the said motions of the defendants' that a copy of the instrument sued on by the plaintiff be filed with his declaration, were presented to Hon. Clarence N. Goodwin, one of the judges of said court, and thereupon an order was entered by the Hon. Clarence N. Goodwin, which order is as follows:

This cause coming on to be heard upon the demurrer to the plaintiff's replication filed herein after arguments of counsel and due deliberation by the court, said demurrer is overruled and it is ordered that the defendants' motion to strike said replication from the files be and is hereby also overruled and denied. It is further ordered that leave be and is hereby given the defendants, Federal Life Insurance Company and Chicago Life Insurance Company, to reply thereto within three days from this date, and it is ordered that the motion of said defendants that the plaintiff file a copy of the instrument sued on, be and is hereby overruled and denied.

To the entry of which order and the ruling of the court therein, the said Federal Life Insurance Company and the said Chicago Life Insurance Company by their respective counsel then and there duly excepted.

66 STATE OF ILLINOIS,
County of Cook, ss.:

In the Superior Court of Cook County.

Gen. No. —. Term No. —.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY and CHICAGO LIFE INSURANCE COMPANY.

Bill of Exceptions.

Be it Remembered, That heretofore on, towit, Monday, November 24, 1913, this cause came on for trial on the issues heretofore joined herein before the Honorable Clarence N. Goodwin, one of the judges of said Court, and a jury duly empanelled to try the issues herein, on the short cause calendar of said Court, and the following proceedings were had, towit:

Appearances:

Messrs. Atwood, Pease & Loucks, by Mr. Vernon R. Loucks, representing the plaintiff;

Messrs. Charles A. Atkinson, and Chilton P. Wilson, representing defendant, Federal Life Insurance Company.

Messrs. Duncombe & Behan, by Mr. Louis J. Behan, representing defendant, Chicago Life Insurance Company.

And thereupon, the plaintiff, to maintain the issues in her behalf, introduced the following evidence, towit:

Mr. Wilson: If the Court please, we think this matter is material. There has been a motion made by each of the defendants, heretofore, to the effect that, under the statute, the plaintiff should file a copy of the instrument sued on and, in order to have the record straight, this morning, on behalf of the Federal Life Insurance Company, I now move the Court that the plaintiff be required to file a copy of the instrument sued on in compliance with the statute, and that, under the statute also, the cause be continued until the next term for failure to file that copy of the instrument heretofore.

The Court: Have you filed that instrument?

Mr. Loucks: Yes.

67 The Court: May I see it.

Mr. Behan: The defendant, Chicago Life Insurance Company, joins in the same motion.

Mr. Loucks: We filed a copy of the judgment.

Mr. Wilson: The copy of the instrument filed don't show the service, or the manner of the service, or anything of that kind that would enable either of the defendants, especially the Federal Life Insurance Company to know the character of the instrument at all, they were suing on, it is merely the abbreviated form of the judg-

ment alone, and it don't comply with the act of congress as to the character of the instrument which is sued on.

Mr. Loucks: This is the same motion which was made before Judge Kavanaugh and, afterwards made before Your Honor, and argued at length in both cases.

The Court: A copy upon which you sued is incorporated in the declaration, or attached to the declaration, is it?

Mr. Loucks: Yes, Your Honor.

The Court: Yes, this motion was filed and you do not need to renew it, this was filed upon the 23rd of September, to file a copy of the instrument sued on, and I denied that motion at that time.

Mr. Wilson: You did, Your Honor.

The Court: I heard the motion and disposed of it, as I believe by the correct way. Now, you want to renew that motion.

Mr. Wilson: We have to, for the reason that we are entitled to examine the instrument sued on.

The Court: Well, I will deny the motion of the defendant. It is not necessary to put it in writing, I do not think it is necessary.

Mr. Wilson: Well, if the instructions show it.

The Court: So you renew the motion made, filed on September 23rd, 1913, for an order on the plaintiff to file a specific copy of the instrument sued on, as required by section 32, chapter 110 of Hurd's Statutes of Illinois.

Mr. Wilson: We make that motion at this time.

The Court: The motion is denied.

Mr. Behan: An exception on behalf of the defendant, Chicago Life Insurance Company.

68 Mr. Wilson: An exception on behalf of the Federal Life Insurance Company.

To which action and ruling of the Court, the defendants, the Federal Life Insurance Company and Chicago Life Insurance Company, by their respective Counsel then and there duly excepted.

The Court: No, gentlemen, do you wish a jury in this case?

Mr. Loucks: We do not.

Mr. Wilson: I think on behalf of the Federal Life Insurance Company, we do. There is a question of fact here of considerable importance to the Federal Life Insurance Company.

The Court: Very well, do you wish the presiding judge to be present while you examine the jury?

Mr. Wilson: I did not understand Your Honor.

The Court: Do you wish the presiding judge to be present while you examine the jury, or will you call me in from time to time?

Mr. Wilson: I think we can call you in if we need you.

The Court: Let the jury be sworn to answer questions.

Mr. Behan: Now, if the Court please, just one other motion on behalf of both of the defendants. Both defendants moved that this case be stricken from the short cause calendar because it is apparent it cannot be tried within the hour.

The Court: The motion is denied.

Mr. Behan: We would like the record to show we started empanelling the jury——

The Court: You may have that shown.

Mr. Behan (continuing): —twenty-five minutes to twelve. And an exception on behalf of both defendants.

The Court: Yes. Now, the examination of the jury is waived by the plaintiff.

Mr. Loucks: Waived by the plaintiff.

To which ruling of the Court the defendants, Federal Life Insurance Company and the Chicago Life Insurance Company, by their respective counsel, each then and there duly excepted.

69 (Whereupon the jury was empanelled and sworn.)

The Court: The jury has been sworn.

Mr. Loucks: Yes.

The Court: Proceed.

Mr. Wilson: Aren't you going to make any statement to the jury?

Mr. Loucks: No.

Mr. Wilson: I want to make a brief statement.

The Court: Q. Don't you care to make a statement?

Mr. Loucks: No.

The Court: Do you care to make one?

Mr. Loucks: I was going to make a very brief one.

The Court: Very well you may make a statement.

(Whereupon opening statements were made to the jury by Mr. Wilson, on behalf of the Federal Life Insurance Company, and by Mr. Behan, on behalf of the Chicago Life Insurance Company.)

The Court: You may proceed.

Mr. Loucks: I would like to have this record marked Plaintiff's Exhibit 1 for identification.

(Said document marked as requested.)

Mr. Loucks: If the Court please I now offer in evidence, Plaintiff's Exhibit 1 being the judgment in the case of Bertha Cherry against the Chicago Life Insurance Company and the Federal Life Insurance Company in the Circuit Court of Chester County, State of Tennessee, in the Court of Civil Appeals, State of Tennessee, and the Supreme Court of Tennessee, and the proceedings with reference to the several judgments duly authenticated.

The Court: What is the amount sued for?

Mr. Loucks: The amount sued for?

The Court: Where is your declaration?

Mr. Loucks: The amount is set forth in the judgment of the Court of Civil appeals.

The Court: What about these costs?

Mr. Loucks: I have the amount.

70 The Court: I want that where it is set forth in the declaration, but I have found it here. What is the total amount?

Mr. Loucks: The judgment is $1,762.04. The costs taxed are $68.45, the interest on the judgment——

The Court: What was the total?

Mr. Loucks: $2,256.31.

Mr. Behan: You say the judgment roll shows $1,762.40?

Mr. Loucks: The judgment roll shows $1,666.25. $95.79, the accrued interest on the judgment of the Court below to the date of the——

Mr. Loucks: $1,666.25.

The Court: $95?

Mr. Loucks: $95.79.

The Court: $95.79.

Mr. Wilson: That is the interest while it was pending in the Tennessee Court.

The Court: The interest of the Court of Civil Appeals.

Mr. Loucks: And the amount, $425.62 interest on the judgment of the Court of Civil Appeals.

The Court: From that time to date?

Mr. Loucks: From that time to date.

The Court: How much?

Mr. Loucks: $425.82.

Mr. Wilson: At what rate of interest do you figure?

Mr. Loucks: at the rate of 5 per cent.

The Court: You will have to connect that up by showing what the rate of interest allowed on judgments in that state is, will you not?

Mr. Loucks: We are in this position, if the Court please. The amount allowed by law in that state is 6 per cent.

The Court: Is that admitted?

Mr. Wilson: No, sir, if your Honor please.

Mr. Behan: No, sir.

Mr. Loucks: And we are a little afraid of that, and we prefer——

The Court: You may present the statute.

71 Mr. Loucks: Of Tennessee?

The Court: Yes.

Mr. Loucks: I would like to offer in evidence the code.

Mr. Atkinson: Now, if the Court please, before proceeding any further, we desire to object to the introduction of any evidence whatever upon the part of the plaintiff, for the reason that the declaration in this case does not state facts sufficient to constitute a cause of action in favor of the plaintiff against either of the defendants, and, for the further reason that there is no transcript of the judgment alleged to be sued on in this action filed with the declaration at any time since the pendency of this action in this court.

The Court: I have disposed of it.

Mr. Wilson: No, you have not disposed of that, because you have disposed of one branch of it, don't mean you have disposed of all of it. You commenced asking questions about this transcript before we had a chance to put in the objection.

The Court: The transcript is not in evidence.

Mr. Atkinson: All right.

The Court: The general objection is overruled. You may renew it with reference to the transcript.

Mr. Atkinson: Exception.

To which ruling of the court, the defendants, Federal Life In-

surance Company and the Chicago Life Insurance Company by their respective counsel, each then and there duly excepted.

The Court: Before I go any further I want to let counsel make his objection in regard to the interest matter.

Mr. Wilson: I object to the proof, I did think he was through with it, I will point out why I object.

The Court: What is the objection?

Mr. Wilson: He has not pleaded the law of the State of Tennessee at all in his declaration. Before you can offer evidence of
72 what the foreign law of this kind is, in this kind of a matter, this evidence must be pleaded. I thought that was what counsel was going to state to your Honor, because they had not pleaded the law of the State of Tennessee.

The Court: What is your position in regard to that?

Mr. Loucks: If the court please, I have a case here I should like to read, and I confess I do not know whether it holds we may show the interest, even though it is not pleaded, but it does apparently authorize the introduction of the statutes of a foreign state, even though not pleaded, but we have a later case here which would seem to limit it to five per cent.

The Court: Let me see what the statutes of the State of Illinois authorizes in regard to interest.

Mr. Wilson: It says five per cent on judgments of this state, I do not think the statute says anything about what shall be required on foreign judgments.

Mr. Atkinson: It does not limit it to this state, it says judgments.

Mr. Loucks: The case cited holds we are entitled to interest even where it is not pleaded.

Mr. Wilson: I haven't said anything about that.

The Court: You may read what you have there.

Mr. Loucks: This is the case of Dean against Krug, 46 Illinois, and I am reading from page 73. This was a suit on a judgment.

(Whereupon Mr. Loucks read from the above cited case.)

The Court: Very well, I will exclude that offer.

Mr. Loucks: There is another case which seems to indicate that we would be entitled to prove the laws of another state, but it is a later case, so——

Mr. Atkinson: I desire to add, if the Court please, to the objection I have already made about the introduction of evidence on behalf of the plaintiff, this objection. Counsel in open court has announced that this action in this court is upon a judgment in the Court of Civil Appeals in the State of Tennessee. The declaration shows a judgment by the Supreme Court of Tennessee. We object, because they have no right to bring this action upon the judgment of Civil Appeals, there being a subsequent judgment by another Court.

Mr. Loucks: There was no judgment by the Supreme Court.

Mr. Atkinson: I am making my objection.

73 Mr. Loucks: Well?

Mr. Atkinson: I say, I am making my objection.

Mr. Loucks: Yes.

The Court: There was a new suit, and judgment in the Supreme Court constituted a new suit, didn't it, the writ of certiorari beginning a new suit, in which they dismissed the writ. That was all there was to it. Now, this is offered in evidence.

Mr. Loucks: It is offered in evidence.

The Court: What is the objection, to this?

Mr. Wilson: To this evidence?

The Court: Yes.

Mr. Atkinson: This last objection, I understand is overruled.

The Court: Yes.

Mr. Atkinson: An exception, I just wanted to get the record straight.

To which ruling of the Court, the defendants, Federal Life Insurance Company and Chicago Life Insurance Company, by their respective counsel, each then and there duly excepted.

Mr. Wilson: I object to the introduction of the transcript.

Mr. Atkinson: We would like to have an opportunity to examine this transcript, we have never seen it.

The Court: You say you have never seen that document?

Mr. Atkinson: Never have seen it.

Mr. Behan: There is the only copy of the instrument they filed.

Mr. Loucks: In our replication we set up all the material facts in that regard.

Mr. Atkinson: We do not know whether it is material.

Mr. Wilson: It would be a very nice thing for you to decide what would be material for us.

The Court: Very well you may return at 2:30 this afternoon.

Mr. Wilson: Can we have this in the meantime?

Mr. Loucks: No objection upon our part.

The Court: It is marked for identification, is it?

Mr. Loucks: Yes, sir.

74 The Court: He says he has no objection to your taking it.

Whereupon an adjournment was taken until 2:30 P. M. of the same day, Monday, November 24, 1913.

MONDAY, November 24, 1913—Two-thirty o'clock P. M.

Court met pursuant to adjournment.

Parties present, same as before.

The Court: You have examined exhibit 1?

Mr. Behan: We have, Your Honor.

The Court: Do you stand on the objection already made to it?

Mr. Behan: Yes, but my purpose for rising now, if the Court please, is again to move *to* court to strike this case from the short cause calendar, and let it take its place upon the calendar.

The Court: Yes.

Mr. Behan: In support of that motion my reasons are as follows. This case contains many important questions.

The Court: Yes.

Mr. Behan: It involves a considerable sum of money; fifty-five minutes of the hour allowed, under the rules of the Court, was consumed at the time Court adjourned for luncheon, and no evidence had been presented up to that time, and, in view of that, I think, for those reasons alone we ought not to be rushed in a case of this importance.

The Court: I will deny the motion.

Mr. Behan: Exception.

Mr. Wilson: Let me suggest, on behalf of the Federal Life Insurance Company, that we are not asking that the case go to the foot of the calendar, we are willing it shall go back right where it was, so that the plaintiff will not suffer any delay, and the object of the motion is, as Mr. Behan has said, we do not want any hasty hearing of the matters as important as these are.

The Court: You may proceed, gentlemen.

Mr. Behan: Exception.

Mr. Wilson: Exception by the Federal Life Insurance Company.

75 To which ruling of the Court, the defendants, The Federal Life Insurance Company and the Chicago Life Insurance Company by their respective counsel, each then and there duly excepted.

Mr. Loucks: Have the record show that the plaintiff has taken about five minutes of the fifty five minutes.

Mr. Wilson: Have you offered that in evidence?

Mr. Loucks: I have already offered it.

Mr. Wilson: Well, I object to the introduction of the document marked Plaintiff's Exhibit 1, for the reason that it is a clear variance. I understand you have offered the record?

Mr. Loucks: Yes.

Mr. Wilson: As plaintiff's exhibit 1?

Mr. Loucks: Yes.

Mr. Wilson: It is a clear variance from the copy of the instrument filed with the declaration under the statute, and a clear variance from the declaration itself.

The Court: In what respect?

Mr. Wilson: The document that is here offered shows a transcript of the proceedings of the Circuit Court of Chester County, Tennessee, and it shows the proceedings, the entire proceedings in that Court and it shows the entire proceedings in the Court of Civil Appeals of Tennessee, and it also shows the proeedings in the Supreme Court in the State of Tennessee.

The Court: You are not objecting on the ground that it does not show the proceedings as set out on the declaration?

Mr. Wilson: We are objecting, that it shows more than is permissible to be proven under the declaration.

The Court: I will overrule the objection.

Mr. Wilson: Exception.

To which ruling of the Court, the defendant, the Federal Life Insurance Company and the Chicago Life Insurance Company by their respective Counsel, each then and there duly excepted.

76 Mr. Behan: In addition, if the Court please, on behalf of the Chicago Life Insurance Company, in addition to the objections indicated by Counsel for the other defendants I would like to make the additional objection that, so far the Chicago Life Insurance Company is concerned, it is apparant from the record that the writ of summons shown in the record was never served upon the Chicago Life Insurance Company or any of its agents by the sheriff of Chester County, or any other County by any official of the State of Tennessee.

The Court: All those points have been saved by the proceedings that have been had heretofore.

Mr. Loucks: Yes.

The Court: The same ruling.

Mr. Wilson: The exceptions will stand to Your Honor's ruling.

The Court: Yes.

To which ruling of the Court, the defendants, the Federal Life Insurance Company and the Chicago Life Insurance Company, by their respective Counsel, each then and there duly excepted.

Mr. Wilson: Well, I haven't finished my objection yet, so far as the Federal Life Insurance Company is concerned, but I will let you go ahead and finish yours.

Mr. Behan: No, that is all right.

Mr. Wilson: Another ground of the objection is, that the record here does not show service on the Federal Insurance Company or any agent of it, and I want to call your Honor's attention to that in the record before you offer it, I want to be heard on that, it is one of the most serious questions.

The Court: I have already heard your objection on that.

Mr. Wilson: You have not examined the record, you never could hear the proposition in that regard for the reason that the replication which they filed and to which we demurred did not show the facts that are shown by this document.

The Court: I will hear you.

Mr. Wilson: I want to put in my other objections and we can argue them at the same time. I object for the additional and further reason that the document now shows that the Federal Life Insurance Company was a foreign corporation, and not doing
77 business in the State of Tennessee, nor incorporated there.

The Court: The ruling of the Court on both those objections will be consistent with the ruling that has been made before——

Mr. Wilson: That is true, but I presume I——

The Court (continuing): and that ruling is that that matter is something that is precluded by the decision of the Court of Appeals, and the Supreme Court of Tennessee.

Mr. Wilson: Well I assume that would be true if the record is the same as the replication, but the record here is not the same as the replication, the document is different that is offered.

The Court: In what respect is it different?

Mr. Wilson: Let me put in my objection, and then you said you will let me be heard on them, and then I will call your Honor's

attention to that. The next objection is that exemplified record that is offered by this plaintiff as exhibit 1 shows a character of service that deprives the Federal Insurance Company of its right to be heard, and depriving it of its property without due process of law under the decision of this state, and of the United States Supreme Court. Another ground is that the declaration does not allege facts sufficient to state a cause of action against the Federal Life Insurance Company, and, for that reason this document is not admissible. Another objection is that the record of the Circuit Court of Chester County, Tennessee, is not an exemplified record as provided by the act of congress.

The Court: Just a minute, let us pass on that point. Let us see it.

Mr. Wilson: And the next objection——

The Court: Oh no, let us pass on this. You rely upon the certification of the Supreme Court of Tennessee?

Mr. Loucks: Yes, Your Honor.

The Court: As to what occurred in the Court below?

Mr. Loucks: Yes, of the Court of Civil Appeals, yes, if the Court please. There are two certificates there, one the certificate of the proceedings in the Circuit Court of Appeals—in the Civil Court of Appeals, and the other one in the Supreme Court of Tennessee.

78 The Court: Yes.

Mr. Loucks: And we are suing on the judgment of the Court of Civil Appeals, which sets out the record in full of the judgment which they rendered.

Mr. Wilson: Then there is no exemplification of the record of the lower court, the Circuit Court of Chester County, Tennessee.

The Court: Why is that necessary?

Mr. Loucks: We are not suing on that judgment.

Mr. Wilson: It is necessary because the writ of error in the Circuit Court—in the Court of Civil Appeals is a new suit. Now, let me say further——

The Court: Just a minute, what was the final order of the Court of Civil Appeals, what was the order?

Mr. Loucks: Rendering judgment for the amount found, in dollars and cents.

Mr. Wilson: That is page 17. I think you will find the beginning of it on page 17.

The Court: 17?

Mr. Wilson: I think it page 17, the beginning of it.

The Court: 17 or 71?

Mr. Wilson: 17.

The Court: Yes.

Mr. Wilson: That is the certification as to the Court of Civil Appeals, the one you have there.

Mr. Loucks: That is the one we are suing on.

Mr. Wilson: You will let them in your declaration, the judgment of the Supreme Court, you are suing on two judgments.

Mr. Loucks: No.

Mr. Wilson: Well your document contains the judgment of the Supreme Court.

Mr. Atkinson: Your declaration sets it out.

Mr. Loucks: It don't set forth that is the instrument we are suing on. That is the judgment we are suing on.

Mr. Wilson: Your declaration sets out the record in all three Courts, and the purported copy of the instrument set out a portion of the record of all three courts. You cannot sue on the record of three courts, nor of two courts, you have got to sue on the record of one, even though your declaration does set out the other.

79 The Court: What is the next objection.

Mr. Wilson: The next objection, I think I put it in, though I am not sure, is that the record that is offered here as Plaintiff's Exhibit 1, does not show service on the Federal Life Insurance Company, and that is one I want to call your Honor's attention to specifically.

The Court: Well, was that not a question raised in the Supreme Court of Tennessee?

Mr. Loucks: Well, it was raised in both courts.

Mr. Wilson: In all three courts it was raised.

The Court: Yes.

Mr. Wilson: But this thing I want to call your Honor's attention to——

The Court: I cannot change my ruling.

Mr. Wilson: You can if the record is different from what the replication is, and the record is vastly different from what the replication was, and I think that you can, in that regard——

The Court: Yes, of course, you are standing by your original proposition.

Mr. Wilson: I don't want to have to stand by that, for I think I can show you you are wrong.

The Court: I am not going to hear you again on this subject.

Mr. Wilson: I think you ought to.

The Court: I don't intend to.

Mr. Wilson: Let me call your Honor's attention now to the summons, and the return on the summons.

The Court: My ruling had been that I am precluded by the act of the Supreme Court of Tennessee, and the Circuit of Appeals—the Civil Court of Appeals, from going into that question at all.

Mr. Wilson: I know that has been your ruling.

The Court: That is my ruling now.

Mr. Wilson: Well now, ought it to be?

The Court: I am not going to consider the question.

Mr. Wilson: Don't you want to see the return on the summons and the evidence upon which both the lower court and the court of Civil Appeals held that our plea in abatement was bad?

80 The Court: My position is I cannot look at it.

Mr. Wilson: I want to show you some authorities on the proposition that I did not have before.

The Court: You have had your day in court on that.

Mr. Wilson: I haven't on this document.

The Court: You have on that proposition of law.

Mr. Wilson: No, I haven't your Honor, I take issue with you squarely on that, I haven't had my day in court on that.

The Court: I will overrule the objections to the document as presented.

Mr. Wilson: Let me call your Honor's attention to an Illinois case, you did not see before, in the thirtieth—

The Court: I am not going to reconsider the question. I decided it on the pleadings and I am not going to reconsider it now.

Mr. Wilson: Exception.

To which ruling of the court, the defendants, Federal Life Insurance Company and the Chicago Life Insurance Company, by their respective counsel, each then and there duly excepted.

Mr. Loucks: Can I have this document marked in evidence?

The Court: Yes, as plaintiff's exhibit.

(Which said document, so offered and received in evidence, was marked "Plaintiff's Exhibit 1," and is in the words and figures as follows, to wit:

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82 The State of Tennessee.

Pleas before the Court of Civil Appeals of said State, for the Western Division thereof, at the January Term, A. D. 1909.

Present: The Hon. S. F. Wilson, Jno. M. Taylor, R. M. Barton, Jr., Horace E. Palmer and Arthur B. Lamb, Judges, when the following proceedings were had, to-wit:

January 23, 1909.

Court met pursuant to adjournment. Present and presiding the Hon. R. M. Barton, Jr., A. B. Lamb, H. E. Palmer, and S. F. Wilson, Judges, when the following proceedings were had, to wit:

Biggs & Spragins, Lawyers, Jackson, Tenn.

Know All Men by These Presents, that we, Chicago Life Ins. Co., Federal Life Ins. Co. and Moreau P. Estes are held and firmly bound unto Bertha Cherry or her certain attorney, executor, administrator or assigns, in the sum of Two Hundred & Fifty Dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators firmly by these presents.

The 30 day of December 1908.

The conditions of the above obligation are such, that whereas, the above bound Chicago Life Ins. Co. and Federal Life Ins. Co. this day filed with the Clerk of the Supreme Court at Jackson a transcript of the record in the case of Cherry vs. Federal Life Ins. Co. from the Circuit Court at Henderson for a writ of error, to the end that said cause may be brought into said Supreme Court for revision.

Now, if said Chicago Life Ins. Co. and Federal Life Ins. Co. shall well and truly prosecute said Writ of Error with effect, or in case of failure therein shall pay all such costs and damages as may be by said Court awarded against them, then the above obligation to be void, otherwise to remain in full force and effect.

CHICAGO LIFE INS. CO.,
FEDERAL LIFE INS. CO.,
By MOREAU P. ESTES.
MOREAU P. ESTES, *Security.*

Filed December 31, 1908. John W Buford, Clerk, By J. E. Springbett, D. C.

83 The State of Tennessee. To the Sheriff of Chester County, Greeting:

Whereas, The Federal and Chicago Life Ins. Co., through their attorney Moreau P. Estes, are the Plaintiffs in error, and Mrs. Bertha R. Cherry is the defendant in error, have this day sued out of the Court of Civil Appeals of Tennessee, for the Western Division thereof, at Jackson, a Writ of Error, to revise and correct a Judgment rendered against them in the Court of Chester County.

We, therefore, command you to make known these presents to the said Mrs. Bertha R. Cherry, and cite her to appear at the next term of said Court of Civil Appeals, to be held on the First Monday of January next, to show cause why said Judgment should not be reversed.

Herein fail not, and make return then and there of this Writ.

Witness: John W. Buford, Clerk of said Court of Civil Appeals, at office, in Jackson this 31 day of December, 1908.

JNO. W. BUFORD, *Clerk.*
By —— ——, *D. C.*

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. et al.

STATE OF TENNESSEE,
Chester County.

Caption of the Minutes February Term, 1908, *Circuit Court of Chester County.*

Be it remembered that on this the 3rd day of February in the year of Our Lord One Thousand Nine Hundred and eight, and of American Independence the 132nd year, the same being the first Monday of said month and the time assigned by law for holding the Circuit Court for Chester County, Tennessee, Present and presiding the Hon. D. W. Herring, Judge, duly appointed and commissioned by the Governor to hold the Courts in the 12th Judicial Circuit during the absence of the Hon. Levi S. Woods, Judge of said Circuit, on account of sickness. B. F. Weir Sheriff of Chester County, C. L. Parrish, Clerk of said Court, when the following proceedings were had and done and entered of record to-wit: Court was opened in due form by the Sheriff.

Pauper Oath.

Filed 15th day of May, 1907.

Mrs. Bertha R. Cherry
vs.
Chicago Life Insurance Co. et al.

The State of Tennessee,
Chester County:

Personally appeared before me C. L. Parrish, Circuit Court Clerk of Chester County, Mrs. Bertha Ripman Cherry, who makes oath in due form of law that on account of her poverty, she is unable to bear the expenses of a suit which she is about to commence against the Chicago Life Insurance Company and the Federal Life Insurance Co. in the Circuit Court of Chester County, and that she is justly entitled to the redress sought to the best of her belief.

Mrs. BERTHA RIPMAN CHERRY.

Sworn to and subscribed before me, this the 15th day of May, 1907.

C. L. PARRISH,
Circuit Court Clerk.

83½ [Endorsed:] No. —. D. — . In Supreme Court. Federal & Chicago Life Ins. Co. vs. Mrs. Bertha R. Cherry. Writ of Error. Issued 31 day of December, 1908. John W. Buford, Clerk.

Came to hand Jan. 1st, 1909, and I hereby especially deputize C. W. Brush to execute the within as commanded. This Jan. 2nd, 1909.

B. F. WEIR,
Sheriff Chester County.

Came to hand Jan. 2nd and party not found and process returned for want of time, Mrs. Cherry not being home. This Jan. 2nd, 1909.

C. W. BRUSH,
Special Dept. Sheriff.

Returned to me from C. W. Brush, Special Dept. Sheriff, Jan. 8th, 1909, and executed on Mrs. Bertha Cherry by making known contents of within to her. This Jan. 8, 1909.

B. F. WEIR,
Sheriff Chester County.

84 *Summons.*

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. et al.

The State of Tennessee. To the Sheriff of Davidson County, Greeting:

You are hereby commanded to summons Chicago Life Insurance Company, a foreign corporation authorized to do business in Tennessee, and the Federal Life Insurance Company, also a foreign corporation, if to be found in your county, to appear before the judge of our Circuit Court, to be held for the County of Chester at the court house in the town of Henderson on the first Monday in June next, then and there to answer Mrs. Bertha Ripman Cherry in an action of debt due by policy issued by the Chicago Life Insurance Company on the life of Rufus M. Cherry for her benefit, for the sum of twelve hundred and fifty ($1,250) dollars and reinsured by the said Federal Life Insurance Company, and the further sum of five hundred ($500) dollars, attorney's fee and interest to her damage eighteen hundred ($1,800) dollars.

Herein fail not and have you then and there this writ:

Witness, C. L. Parrish, clerk of our said court at office the 4th Monday in February, A. D. 1907.

C. L. PARRISH, *Clerk.*

By virtue of authority in me vested I have today acknowledged service of the within summons for the Chicago Life Insurance Company, this the 20th day of May, A. D. 1907, at 11:30 a. m.

REAU E. FOLK,
Insurance Commissioner.

Issued 15th day of May, 1907. C. L. Parrish, Clerk.
Filed 28th day of May, 1907. C. L. Parrish, Clerk.

85 MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO.

Declaration.

The plaintiff Mrs. Bertha Ripman Cherry, sues the defendant, The Chicago Life Insurance Co., for the sum of Eighteen Hundred ($1,800.00) Dollars, which sum the defendant owes the plaintiff on a certain policy of insurance here to the Court shown whereby the defendant on the 21st day of September, 1906, insured the life of Rufus M. Cherry, and promised to pay the plaintiff the sum of Twelve Hundred and Fifty ($1,250.00) Dollars immediately upon receipt and approval of proofs of his death.

The plaintiff avers that the said Rufus M. Cherry died on the —

day of ——, 1906, and that due notice and proof of his death were prepared and delivered, as directed by the defendant, before this action was commenced, to-wit: February 1, 1907, and that demand was made for the payment of said policy which the defendant has failed and refused to pay.

The plaintiff avers that the refusal of said defendant to pay said policy was not in good faith, and that it justly owes plaintiff said sum of Twelve Hundred and Fifty ($1,250.00) Dollars, and its refusal to pay has incurred additional cost and expense to her for attorneys fees, etc., and that 25% of the recovery herein will be a reasonable attorneys fees for same, which amount, together with interest on said policy she sues and demands a jury to try the issues joined in this case.

BIGGS & SPRAGINS, *Attorneys.*

Second Count.

The plaintiff, Mrs. Bertha Ripman Cherry, sues the defendant, The Chicago Life Insurance Company, for the sum of Eighteen Hundred ($1,800.00) Dollars, by reason of the following facts, to-wit:

The defendant, The Chicago Life Insurance Co. is a corporation, organized for the purpose of doing a life insurance business, and that during the year 1906, her husband, Rufus M. Cherry, made application for a policy of insurance upon his life, and that on or about the 21st day of September, 1906, the said defendant issued and delivered a policy of insurance, #10192, upon the life
86 of said Rufus M. Cherry, wherein it promised and agreed to pay the plaintiff, his wife, the sum of Twelve Hundred and Fifty ($1,250.00) Dollars, immediately upon receipt and approval of proofs of his death; the said policy being issued in consideration of a premium for the sum of Thirty-one and Eighty-three Hundredths ($31.83) Dollars, and an annual premium thereafter to be paid on the 21st day of September for the sum of Thirty-one and Eighty-three Hundredths ($31.83) Dollars, which policy is here to the Court shown.

The plaintiff avers that the said Rufus M. Cherry died on the — day of ——, 1906, while the said policy was in full force and effect, and that soon thereafter to-wit: February 1, 1907, she made application to the defendant, or its agent, for necessary blanks, to make the proper and necessary proofs of his death, and that said agent furnished, or caused to be furnished to her said blanks, which blanks were properly made out and the death of said Rufus M. Cherry formerly proven as required by said blanks, and that by direction of the defendant, the said blanks were forwarded and delivered to the Federal Life Insurance Company, before the Commencement of this suit, which Company had reinsured said Rufus M. Cherry at the instance of said defendant.

Plaintiff further avers that, afterwards she wrote, or caused to be written, to the Chicago Life Insurance Company, explaining that formal proofs of the death of her husband had been made out

forwarded to the Federal Life Insurance Co. in accordance with its request, but that she was ready and willing to make additional proofs as to the death of said Rufus M. Cherry, if the defendant so demanded, and requested said defendant to forward to her, or to her attorneys, necessary blanks upon which said proofs could be made, if the former proofs were not sufficient, and that its failure to send said blanks, or to give further instructions, would be considered that the former proofs were satisfactory.

Plaintiff avers that the said defendant received said request, and that it has failed to furnish her said blanks, and has thereby admitted that the proof of death made out and forwarded were sufficient and waived the necessity of furnishing any further or other proofs of the death of said Rufus M. Cherry. Plaintiff avers that the said Chicago Life Insurance Company claims that the said Rufus M. Cherry was re-insured by the Federal Life Insurance Company, and that said Company was bound for said policy.

87 Plaintiff avers that she has demanded payment of said policy from the Federal Life Insurance Company and also the Chicago Life Insurance Company, and that they have refused to pay said policy. She avers that said refusal was not in good faith, and that the defendant, the Chicago Life Insurance Co. justly owed the amount of said policy, and that by its failure to pay the same, she has incurred additional cost and expense, and that 25% of the amount recovered in this case would be a reasonable attorneys fee, and that said defendant is liable for same by virtue of Acts of 1901, of the General Assembly of Tennessee, Chapter 141. She alleges that demand was made of defendant for payment of said policy more than sixty days before the commencement of this suit. Plaintiff therefore sues to recover the face of said policy, to-wit: the sum of Twelve Hundred and Fifty ($1,250.00) dollars, together with interest thereon, from the — day of ——, 1906, and 25% interest thereon, aggregating the sum of Eighteen Hundred ($1,800.00) Dollars, and demands a jury to try the issues joined.

BIGGS & SPRAGINS,
Attorneys for Plaintiff.

88 June Term, 1907.

No. 514. June 6th, 1909.

Mrs. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. and FEDERAL LIFE INSURANCE CO.

Action for Debt. Continuance.

This cause is this day continued by consent till the next term of the Court.

It is ordered by the Court that the Clerk of this Court will issue an alias summons for the Federal Life Insurance Co. at any time the same is demanded by the Plaintiff or her Attorney.

I, C. L. Parrish, Clerk of the Circuit Court of Chester County, Tennessee, certify that this is a true and correct copy as appears on M. B. No. 5 of this Court and of above date.

This June 14th 1908.

C. L. PARRISH,
Circuit Clerk.

Summons.

Federal Life Insurance Company.

Mrs. Bertha R. Cherry
vs.
Chicago Life Ins. Co. et al.

88½ The State of Tennessee, to the Sheriff of Chester County, Greeting:

You are hereby commanded to summons the Federal Life Insurance Company, a foreign corporation, if to be found in your County, to appear before the Judge of our Circuit Court, to be held for the County of Chester, at the Court House in the town of Henderson, on the First Monday in October, next, then and there to answer Mrs. Bertha Ripman Cherry in an action of debt due by policy issued by the Chicago Life Insurance Company on the life of Rufus M. Cherry for her benefit for the sum of Twelve Hundred and Fifty ($1,250.00) Dollars and re-insured by the said Federal Life Insurance Company, and the further sum of Five Hundred ($500.00) Dollars Attorneys fees and interest to her damage Eighteen Hundred ($1,800.00) Dollars.

Herein fail not, and have you then and there this Writ:

Witness C. L. Parish, Clerk of our said Court, at office, the 1st Monday in June, A. D. 1907.

C. L. PARRISH, *Clerk.*

Issued 24th day of June 1907. C. L. Parrish, Clerk.

Executed as within directed by reading the same to G. G. Butler, agent of the Federal Life Insurance Company or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued upon, and who was the agent of the Chicago Life Insurance Company and it being the agent of the Federal Life Insurance Company in the delivery of the policy sued upon and represented said corporation at the time.

This 24 day of June, 1907.

B. F. WEIR,
Sheriff of Chester County.

Filed June 28th 1907. C. L. Parrish, Clerk.

89 *Amendment to Declaration.*

Pending in the Circuit Court of Chester County, Tennessee.

Mrs. Bertha R. Cherry
vs.
Chicago Life Ins. Co. et al.

In this cause the plaintiff moves the Court to be allowed to amend her declaration in this cause by adding the following counts to wit:

Third Count.

The plaintiff, Mrs. Bertha Ripman Cherry sues the defendant the Federal Life Insurance Company for the sum of $1,800 by reason of the following facts to wit:

That the Chicago Life Insurance Company is a corporation organized for the purpose of doing a Life Insurance business, and that during the year 1906 her husband Rufus M. Cherry made application for a policy of insurance upon his life, and that on or about the 21st day of September 1906 the said Chicago Life Insurance Company issued a policy of Insurance upon the life of the said Rufus M. Cherry wherein it promised and agreed to pay the plaintiff, his wife, the sum of $1,250 immediately upon receipt and approval of proofs of his death. The said policy being issued in consideration of a premium of the sum of $31.83 and an annual premium thereafter to be paid on the 21st day of September for the sum of $31.83, which policy is here to the court shown. The plaintiff avers that on or about the 22nd day of September 1906 the Federal Life Insurance Company by a written contract re-insured and guaranteed the payment of the policy above mentioned. Said written agreement and guaranties here to the Court shown. The number of the said policy being changed by the Federal Life Insurance Company as number 15587.

The plaintiff avers that the said Rufus M. Cherry died on the — day of ——, 1906, while the said policy was in full force and effect, and that soon thereafter she made application to the defendant or its agent for necessary blanks to make the proper and necessary proof of his death, and that the said agent furnished or caused to be furnished to her the said blanks, which blanks were properly made out, and the death of the said Rufus M. Cherry formally proven, as required by said blanks, and that same were forwarded and delivered to the Federal Life Insurance Company before the commencement of this suit.

90

Plaintiff avers that the said Federal Life Insurance Company is indebted to her in the sum of the face of said policy to wit: $1,250 and interest thereon and the further sum of 25 per cent of the amount recoverable in this case as reasonable attorney's fees.

She avers that said defendant has refused to pay said policy and that said refusal was not in good faith, and that the said defendant

is justly indebted to her for said amount. She alleges that demand was made of the defendant for payment of said policy more than 60 days before commencement of this suit. Plaintiff therefore, sues to recover said amount from the Federal Life Insurance Company and demands a jury to try the issues joined.

BIGGS & SPRAGINS,
Attorney- for Plaintiff.

Fourth Count.

The plaintiff, Mrs. Bertha Ripman Cherry, sues the defendants, Chicago Life Insurance Company for the sum of $1,800 by reason of the following facts to wit:

The defendant, the Chicago Life Insurance Company is a corporation organized for the purpose of doing a Life Insurance business, and that during the year 1906 her husband, Mr. Rufus M. Cherry, made application for a policy of Insurance upon his life, and that on or about the 21st day of September 1906, said defendant issued and delivered a policy of insurance upon his life and that on or about the 21st day of September 1906 said defendant issued and delivered a policy of insurance number 10192 upon the life of said Rufus M. Cherry, wherein it promised and agreed to pay to the plaintiff, his wife, the sum of $1,250 immediately upon receipt and approval of proofs of his death. The said policy being issued in consideration of a premium for the sum of $31.83, and an annual premium thereafter to be paid on the 21st day of September for the sum of $31.83, which policy is here to the court shown.

[On left-hand margin: Briggs & Spragins, Lawyers, Jackson, Tenn.]

The plaintiff further alleges that on or about the 22nd day of September 1906, the Federal Life Insurance Company by a written contract and agreement re-insured and guaranteed the policy
91 contracts of the Chicago Life Insurance Company including the said policy herein above mentioned, and thereby became liable jointly with the Chicago Life Insurance Company for the payment of said policy. The said written guarantee and re-insurance is here to the Court shown.

The plaintiff avers that the said Rufus M. Cherry died on the —— day of ——, 1906, while the said policy was in full force and effect, and soon thereafter she made application to the agent of the said defendants for necessary blanks to make the proper and necessary proofs of the assured's death, and that the said agents furnished, or caused to be furnished to her said blanks which were properly made out, and the death of said Rufus M. Cherry formally proven, as required by said Companies, and that by direction the said proofs were forwarded to the Federal Life Insurance Company, before the commencement of the suit.

Plaintiff avers that the said defendants have received said proofs of death, and that she has demanded payment from both of said defendants for payment of said policy, and that they have refused

to pay same. She avers that said refusal was not in good faith, and that the Chicago Life Insurance Company and the Federal Life Insurance Company are jointly and severally indebted and justly owing, the amount of said policy, and that by their failure to pay same she has incurred additional costs and expenses, in the amount of the attorney's fees expended and to be paid in this case, and that 25 per cent of the amount recovered would be a reasonable attorney's fees for same. The said defendants are liable for said amount by virtue of the Acts of 1901 Chapter 141.

She alleges that *that* demand was made of defendants for payment of said policy more than 60 days before commencement of this suit. Plaintiff therefore sued to recover the face of said policy to-wit: The sum of $1,250 together with interest thereon from the — day of ——, 1906 and 25 per cent thereon for additional costs and expenses incurred by her aggregating the sum of $1,800.00, and demands a jury to try the issues joined.

BIGGS & SPRAGINS,
Attorneys for Plaintiff.

92 Filed 14th day of August, 1907. C. L. Parrish, Clerk.

Plea in Abatement of Defendant Chicago Life Insurance Company.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO.

The defendant for plea in abatement to the summons or writ in this cause and to this suit says:

I.

"The said writ or summons is addressed to the sheriff of Davidson county and not Chester county, in which the said suit is instituted, and does not show that it is a counterpart summons, or that there is a defendant who has been served with process in Chester county.

II.

The writ or summons shows upon its face that it was never served upon Reau E. Folk, insurance commissioner, by the sheriff of Davidson county, but that the service of process is acknowledged on behalf of the Chicago Life Insurance Company by the said Commissioner.

The Acts of 1895, Chap. 160, Sec. 9, Sub-Sec. 3, requiring a foreign insurance company to file a power of attorney with the insurance commissioner, constituting him an agent upon whom process may be served, does not authorize the commissioner of insurance to acknowledge service of process on behalf of foreign insurance companies, but expressly provides that such process must be served upon such commissioner by the proper officer of the county, in which the commissioner may have his office.

III.

The said insurance commissioner was not in the County of Chester at the time that the writ or summons was issued, and was not in Chester county at the time that he acknowledged service of process on behalf of this defendant, under the above act authorizing the service of process upon the commissioner, he is made the statutory agent of the defendant, and merely stands in the place of the defendant. For this reason the suit must be brought in the
93 county where the commissioner lives and where he has his office, and cannot be brought in a county where he does not live and has no office, and when he is not in the county either at the time the said writ or summons was issued, or at the time that he acknowledged service of process for defendant, this defendant, therefore, asks that the writ or summons in this case be quashed and abated and that this suit be dismissed."

MOREAU P. ESTES.
P. M. ESTES.

STATE OF TENNESSEE,
County of Davidson:

Moreau P. Estes, Attorney for the defendant, Chicago Life Insurance Company, makes oath that the statements in the above plea are true.

MOREAU P. ESTES.

Signed and sworn to before me, this 14th day of September 1907.

[N. P. SEAL.] JAS. B. McKEE,
Notary Public.

Filed Sept. 16, 1907. C. L. Parrish, Clerk.

94 BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO.

Plea in Abatement of the Federal Life Insurance Company.

The defendant for plea in abatement to the summons or writ in this cause and to this suit says:

The summons or writ shows that it was served upon one G. G. Butler, who was designated as agent of the Federal Life Insurance Company, or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued on.

This is attempted service under sections 4545 and 4546 of Shannon's Code of this State, providing that service of process can be had upon a foreign corporation by service upon the agent who represented the corporation at the time of the transaction out of which the suit arose.

The defendant, Federal Life Insurance Company, states that the said Butler was not its agent at the time that this application for this policy was taken out, nor at the time that this policy was de-

livered. The said Butler has never been the agent of the Federal Life Insurance Company and the Federal Life Insurance Company has never had any relation with said Butler in any way whatever. The Federal Life Insurance Company has never done business in this State, and has never been licensed to do business in this State, and, therefore, could not have had an agent here who was authorized either to solicit applications or to deliver policies.

For these reasons the defendant, Federal Life Insurance Company prays that the writ or summons in this case be quashed and this suit abated.

MOREAU P. ESTES,
P. M. ESTES,
Att'ys for Def't.

95 STATE OF TENNESSEE,
County of Davidson:

Moreau P. Estes makes oath that the statements in the foregoing plea are true in substance and in fact.

MOREAU P. ESTES.

[N. P. SEAL.] FRANK N. BOENSCH, JR.,
Notary Public.

Filed Oct. 1st, 1907. C. L. Parrish, Clerk.

96 *Demurrer of Plaintiff to Plea in Abatement of Chicago Life Ins. Co.*

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO.

The plaintiff demurs to the plea in abatement filed by the Chicago Life Insurance Company in this cause, and for cause of demurrer says:

I.

Because none of the reasons assigned in the plea in abatement in this case for want of proper service of process on the defendant, Chicago Life Insurance Company are sufficient to show want of legal service.

II.

Because from the facts appearing from the process issued and returned and from the allegations stated in said plea, the Chicago Life Insurance Co. has been legally and properly served with process, and is properly before the Court.

Wherefore plaintiff prays that said plea be overruled.

BIGGS & SPRAGINS,
Attorneys for Plaintiff.

Filed June 28th, 1908. C. L. Parrish, Cl'k.

97 *Plea of Plaintiff to Defendant Federal Life Insurance Company's Plea in Abatement.*

BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO.

Plaintiff denies the allegation in the plea in abatement of the Federal Life Insurance Co. that G. G. Butler was not the agent for the said Federal Life Insurance Co. when the policy upon which this suit is based was issued and delivered to the deceased.

She denies the allegation that the said Butler has never been the Agent of the Federal Life Insurance Co. and never had any relation with the said Company whatever.

She denies the allegation that said Company has never done business in this State, but plaintiff alleges that the policy issued in this case was turned over to the said Butler by the Federal Life Insurance Company to be delivered to Rufus M. Cherry, whose life was insured, and that said Butler did deliver and turn over said policy to him as the agent for the said Federal Life Insurance Co., and that the said Federal Life Insurance Co. has many policies now outstanding in the State of Tennessee, on which premiums are being paid to the Federal Life Insurance Company, and that the said Company is doing a life insurance business in the State of Tennessee.

BIGGS & SPRAGINS,
Attorneys for Plaintiff.

Filed Jan. 28th, 1908. C. L. Parrish, Cl'k.

98 June 27, 1907.

Mrs. BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO. & FEDERAL LIFE INS. CO.

Notice.

To the Federal Life Insurance Company:

You are hereby notified that Mrs. Bertha R. Cherry has commenced suit against the Federal Life Insurance Co. and also the Chicago Life Insurance Co. in the Circuit Court of Chester county, Tennessee, to recover the sum of $1,250 for a policy of insurance issued by the Chicago Life Insurance Co. on the life of Rufus M. Cherry for her benefit, and reinsured by the Federal Life Insurance

Co., and the further sum of $500 for attorney's fees and interest, making the sum sued for in her cause of action, $1,800, said writ issued in said suit is returnable the first Monday in October, 1907, at the court house in the town of Henderson, Chester county, Tennessee.

A true and correct copy of the process issued in said suit and the return of the officer endorsed thereon is hereto attached and marked Exhibit No. 1 as part of this notice.

This 27th day of June, 1907.

MRS. BERTHA RIPMAN CHERRY,
By BIGGS & SPRAGINS,
Attorneys for Plaintiff.

P. S.—The process issued and marked exhibit number one to notice is on page No. 10. Clerk (page 7 on this copy).

"EXHIBIT D."

Affidavit to Notice.

MRS. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. & FEDERAL LIFE INSURANCE CO.

STATE OF ILLINOIS,
County of Cook:

This day personally appeared before me, Albertine E. Hathaway, a Notary Public in and for said County and State, Charles O. Loucks, who makes oath in due form of law that as the attorney for
99 Mrs. Bertha R. Cherry he lodged with the Federal Life Insurance Company, at its home office in Chicago, Illinois, notice of the suit commenced by Mrs. Bertha R. Cherry against the Chicago Life Insurance Co. and the Federal Life Insurance Co. in the Circuit Court of Chester County, Tennessee, and also a true and correct copy of the process issued in said cause with the officers return thereon, a true and correct copy of said notice, and process with officers return thereon are marked exhibit No. 1 as part of this affidavit hereto attached. Said notice and process was on the 29th day of June 1907 left with Charles O. Atkinson who was Vice President of the Federal Life Insurance Company, and the same was lodged with him as said officer of said Company at the Home Office of said Federal Life Insurance Company at Marquett Building in the City of Chicago, Illinois.

CHARLES O. LOUCKS.

Sworn to and subscribed before me this 29th day of June 1907.
[N. P. SEAL.] ALBERTINE E. HATHAWAY,
Notary Public.

Filed June 28th, 1908. C. L. Parrish, Clerk.
Exhibit No. 1 to affidavit, see page #16.

100 Mrs. Bertha R. Cherry
vs.
Chicago Life Ins. Co. et al.

Order Sustaining Demurrer of Plaintiff and Overruling Plea in Abatement of Chicago Life Insurance Co.

This day came the parties by their attorneys, and the plea in abatement filed by defendant Chicago Life Insurance Company and demurrer thereto was heard by the court and after argument of counsel the court was of the opinion that the demurrer is well made and that said plea should be overruled and disallowed, which is so ordered with leave of said defendant to further plead to said cause of action if it so desired, when counsel for said defendant stated in open court he was not authorized to represent said defendant further, the cause was further heard upon the plea in abatement filed by the Federal Life Insurance Co., the replication of plaintiff thereto and issue joined thereon. The same being submitted to the court without the intervention of a jury, when after hearing proof introduced and argument of counsel the court finds the issues in favor of the plaintiff and overrules the said plea in abatement and gives leave to defendant to plead to said cause of action if it so desired when counsel for defendant stated in open court that he was not authorized to further represent the defendants.

Thereupon the said defendants being solemnly called to come into open court as they were bound to do and defend said suit came not but made default. Thereupon a jury of good and lawful men, to wit: M. E. Bishop, W. G. Gately, N. P. Ingraham, J. W. Butler, R. D. Murchison, B. Talley, B. F. Robertson, W. B. Sumner, Whit Seaton, A. B. Clifford, J. N. Gibson and W. C. Thompson, who being duly empaneled, sworn and charged to assess the damages claimed by plaintiff in her declaration upon their oath say that they find for plaintiff the face value of the policy, to wit: the sum of $1,250 with interest thereon for twelve months, amounting to the sum of $75 making the sum of $1,325, and they further find in her favor 15 per cent of said amount, to wit: the sum of $198.75 for cost and expenses as provided by acts of 1901, making the total amount $1,523.75.

101 Thereupon the plaintiff moved the court for a new trial as to the amount of cost and expenses as found by them, to wit: the sum of $198.75, for the reason there is no evidence to support the said amount, the proof being that 25 per cent would be a reasonable amount for attorneys' fees incurred by plaintiff in this cause which the court is pleased to sustain and which verdict is set aside and for nothing held, and thereupon another jury was summoned and said matters submitted to them, said jury, to wit: Bob Mayfield, John Ellis, Jeff Cothren, Lee Molton, Tom Cothren, Whit Seaton, John McDonald, C. C. Hardeman, A. B. Feilds, C. Parker, H. J. Alexander, and John Galbraith being duly empaneled, sworn and charged to ascertain the amount of damages that plaintiff has

sustained and entitled to recover, who upon their oath say that they find for the plaintiff the face of said policy, to wit, the sum of $1,250 and interest on same for twelve months amounting to $75, the further sum of $341.25 for cost and expenses incurred by plaintiff in this suit including attorneys' fees making total amount of $1,666.25. It is therefore the judgment of the court that the plaintiff Mrs. Bertha R. Cherry recover from defendants Chicago Life Insurance Co. and the Federal Life Insurance Co. jointly and separately the sum of $1,666.25 and all costs of this suit for which execution may issue.

Filed February 3, 1908.

C. L. PARRISH, *Clerk.*"

No. 514.

Mrs. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE CO. et al.

Dismissing Plea in Abatement and Overruling Motion for a New Trial.

This cause came on to be heard by the Court on February 3rd, 1908, a former day of the present term, upon the plea in abatement of the defendant Federal Life Insurance Co., the plaintiffs replication thereto, and the rejoinder thereto, and after hearing the evidence and argument of counsel the Court acting without the intervention of a jury finds the issues in favor of the plaintiff and is pleased to dismiss said plea in abatement and to order that the defendant Federal Life Insurance Company answer the allegations and matters set out in plaintiff's declaration, the defendant Federal Life Insurance Co. excepts to the action of the Court to all of such
102 matters and moved the Court for a new trial as to such matters which exceptions and motion for a new trial are overruled by the Court. Thereupon the defendant Federal Life Insurance Co. filed its bill of exceptions setting out all matters and evidence considered by the Court in finding said issues for plaintiff which bill of exceptions is signed and sealed by the Court and ordered to be filed and made a part of the record.

D. W. HERRING,
Sp. Judge.

Filed Feb. 3, 1908, C. L. Parrish, Clerk.

Last Entry.

Mrs. BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO. et al.

This cause came on to be heard on February 3rd, 1908 upon motion to dispose of the demurrer filed by the plaintiff to the plea in

abatement of the Chicago Life Insurance Co., and after due consideration thereof, the Court is pleased to sustain said demurrer and to dismiss said plea in abatement. It is accordingly ordered by the Court that the said defendant, Chicago Life Insurance Co. answer the allegations and matters set out in plaintiff's declaration, to which action of the Court the defendant Chicago Life Insurance Co. excepted, which exceptions are overruled by the Court.

Filed Feb. 3, 1908. C. L. Parrish.

103 BERTHA R. CHERRY
vs.
CHICAGO LIFE INS CO. et al.

Bill of Exceptions.

On the trial of this cause on the issue joined on the plea in abatement of the Federal Life Insurance Co., copy of notice, etc. were read to the Court (see page 16 for notice and affidavit marked exhibit D. thereto) The following was all the evidence submitted to the Court:

The plaintiff's witness, G. G. Butler testified that he was the agent for the Chicago Life Insurance Co. in soliciting the application upon which the policy sued on in this cause was issued on the life of Rufus M. Cherry, and that the application was taken on the regular printed application form of the Chicago Life Insurance Co. He never solicited insurance for the Federal Life Insurance Co., and that the Federal Life Insurance Co. has never been licensed to do business in this State.

The policy was issued by the Chicago Life Insurance Co. and sent to its General Agent for this State, W. L. Looney of Nashville, Tennessee. Witness Butler notified Looney to send policy to J. W. N. Baird for delivery to the assured as witness Butler would not be in Henderson, Tennessee, at the time. After assured, Cherry's, death witness Butler was authorized by the Federal Life Insurance Co. to submit a proposition of compromise to the plaintiff and that he went to the residence of plaintiff several miles in the country to see plaintiff to settle said policy, that he was authorized by the Federal Life Insurance Co. to compromise and had the check of the Federal Life Insurance Co. with him to settle if he was able to effect said compromise, but he failed to make said settlement. This is all the connection the witness had with the Federal Life Insurance Co. The Federal Life Insurance Co. reinsured the business of the Chicago Life Insurance Co., and was collecting the premiums due on said business through W. L. Looney of Nashville, Tennessee, who was then collecting agent. Witness Butler lived at Henderson, Tennessee, and the assured lived at the same place and the application was taken out in Henderson, Tennessee; that there were quite a number of policy holders in Chester County; that were issued by the Chicago Life Insurance Co. and which were re-insured by the Federal Life

Insurance Co., and who continued to pay their premiums to the Federal Life Insurance Co. up to now. John Cherry testified that he delivered the policy to his Brother, Rufus M. Cherry, and that it was in the same condition as at present. Witness took out a policy in the Chicago Life Insurance Co. at the same time, which was delivered to him after Sept. 22, 1906, and he was still paying his premiums on said policy and that he knew of three others whose policies come after Sep. 22, 1906, and who are still paying their pre-iums on said policies; that there were quite a number of policy holders who were paying their premium to said Federal Life Insurance Co., in Chester County, Tennessee. Plaintiff introduced the application and policy of insurance. (By order of the Court and consent of parties the original policy and original application will be made a part of the record and bills of exception without being copies.) Identified as Exhibit B & C. to this Bill of exceptions by Court and Clerk introduced, which is agreement of parties identified as Exhibit A to this bill of exceptions by signature of Court and Clerk of this Court.

This was all the evidence the defendant Federal Life Insurance Co. tenders this its bill of exceptions to the judgment of the Court finding the issues under the plea in abatement of the Federal Life Insurance Co. in favor of plaintiff and in overruling this motion on a new trial, which bill of exceptions is signed and sealed and made apart of the record in this cause.

This 3rd day of February 1908.

D. W. HERRING,
Sp. Judge.

MOREAU P. ESTES,
Att'y for Defendant.
BIGGS & SPRAGINS,
Attorneys for Plaintiff.

104 Mrs. Bertha R. Cherry
vs.
Chicago Life Ins Co. et al.

Exhibit A to Bill of Exceptions.

In this cause it is agreed that the following facts are true, and may be used as evidence by either party, on the trial of the issues joined on the plea in abatement filed by the Federal Insurance Co.

(1) That the Federal Life Insurance Co. has never been licensed to do business in this State, and has never issued policies of insurance in this State.

(2) That the application upon which this policy was issued was made by Rufus M. Cherry on the regular application blanks of the Chicago Life Insurance Co., through its agent, G. G. Butler, and at said time the said G. G. Butler was not the agent of the Federal Life Insurance Co.

(3) That the policy herein sued upon was re-insured in the Federal Life Insurance Co. by the Chicago Life Insurance Company.

BIGGS & SPRAGINS,
Att'ys for Plaintiff.
MOREAU P. ESTES,
Att'y for Defendant.

D. W. HERRING, *Judge,*
C. L. PARRISH, *Clerk.*

Filed 3rd day of February, 1908. C. L. Parrish, Clerk.

105 EXCEPTION "B" TO BILL OF EXCEP.

D. W. Herring, Judge, C. L. Parrish, Clerk.

Application to Chicago Life Insurance Company.

Located at 135 Adams Street, Chicago, Illinois.

1. Full name of the person applying for insurance: Rufus M. Cherry.

2. My residence is: street: —, City: Henderson, County: Chester, State: Tenn.

My place of business is: Country: City Henderson, County Chester, State: Tenn.

Address to which Notices of Premiums are to be sent is: R. F. D. # 2, Henderson.

3. A. Present Occupation: Farming.

3. B. State your exact duties in full: Cultivation of soil.

3. C. Are you married? Yes.

4. A. Place of Birth: City & State; McNairy Co.

4. B. Race: Caucasion.

4. C. Born on 26 day of July 1881.

4. D. Age nearest birthday, 25.

5. A. Are you now insured in any Co. or society? (Answer yes or no): No.

B. Name of Co. — Amount— Date— Kind— of Policy—.

B. If so, state in what companies or Societies, plan and amount in each and date of last policy. X.

C. Have you an application now pending in any Company or Society? X.

D. If so give name of Company or society and date of examination.

6. A. Has any Company or Society ever declined to issue a policy on your life? X.

B. If so state name of Company or Society, and date.

7. A. Has any Company or Society ever issued, or offered to issue, a policy on your life differing from the one then applied for? X.

B. If so state the name of the Company or Society, particulars and date.

8. Do you contemplate within the next year engaging in Army

or Naval, service, or changing your residence or occupation, or travelling in or through the Tropics, Asia, Africa or Alaska. (State fully.)

9. A. To whom is the insurance applied for to be payable in event of death? Note,—Give first name in full: Bertha Ripman Cherry.

9. B. Relationship: Wife.

9. C. Present residence: Henderson R. F. D. # 2.

9. D. Do you wish to reserve the right to change the beneficiary at any time if not then assigned? Yes.

10. Plan of policy desired: Special Guaranty.

Sum to be insured: $1,250. Premiums $31,83; Payable Annually On what table: b. Life. 26 Premiums.

Note.—Strike out rates and plans not desired.

I agree, on behalf of myself and of any person who shall have or claim any interest in any policy issued and based upon this application, as follows:

1. That only the Officers at the Executive Office of the Company in the City of Chicago have authority to determine whether
106 or not a policy shall issue on my application. 2. No statements, promises or information made or given by, or to the person soliciting or taking this application for a policy, or by or to any person, shall be binding on the Company or in any manner effect its rights, unless such statements, promises or information be reduced to writing in this application, and presented to the officers of the Company at the Executive Office. 3. That in any distribution of surplus or apportionment of profits, the principal and methods which may be adopted by the Company for such distribution or apportionment, and its determination of the amount equitably belonging to any policy which may be issued under this application, shall be conclusive upon the insured under said policy and upon all parties having or claiming any interest thereunder. 4. That the insurance under any policy issued on this application shall take effect as of the date of this application unless otherwise agreed in writing. 5. That any payment in advance on account of premium shall be binding on the Company only in accordance with the agent's or cashier's receipt therefor on the Company's authorized form. 6. That any policy issued in pursuance of this application shall be in consideration of my statements and agreements made herein, and of the payment in cash of the first premium hereon. 7. That the Insured may, without the consent of the Beneficiary, receive every benefit, exercise every right and enjoy ever- privilege conferred upon the Insured by such policy.

Dated at Henderson this 28th day of August 1906. Date of Policy Oct. 1st, 1906. Signature of the person applying for insurance. (Give first name in full):—— ——

Names of references are: *R. F. D.* # 2.

Witnessed by G. C. Butler, agent. Other Agents —— ——.

W. H. Tallery, Farmer, Henderson, Tenn.

C. C. Tarply, Farmer, Henderson, *R. F. D.* #2, Tenn.

A. J. Maness, Farmer, Henderson, *R. F. D.* #2 Tenn.

If applicant is a woman a woman's blank must be executed and forwarded to the Company.

If a Minor, the signature of parent or guardian must appear below.

I hereby consent to and approve of the above application ——, ——.

Insert relationship after signature.

Statement to be Signed by Applicant Upon Payment of the Premium (or any Part Thereof) in Cash.

Dated at —— 190—.

I hereby declare that I have paid to —— —— — Dollars in cash, and that I hold his receipt, for same. (Signature of applicant) —— ——.

Received from —— —— at —— State of —— this — day of —— 190— the sum of —— Dollars, the sum declared by applicant in his application to have been paid in cash, on the following conditions and agreements:

First. That if a policy be issued on the application for insurance made by the above named applicant this day to the Chicago Life Insurance Company, corresponding in date and number to this receipt, the said Company will accept this receipt as cash toward payment of the first premium upon the said policy.

Second. That this receipt will not be valid if issued for any sum in excess of the sum declared by applicant in such application to have been paid; it will not be valid unless presented within sixty (60) days from date hereof; and it will not be valid unless the person to whom it is issued is promptly examined by a regularly appointed examiner of the Chicago Life Insurance Company.

Third. That if a policy be not issued on said application and examination within sixty days from date (and only in that event), said sum will be returned on surrender of this receipt to the Company.

Fourth. That the liability of the Company under this receipt shall not exceed the sum declared by the applicant in his application to have been paid, and that this receipt is non-negotiable and cannot be assigned or transferred.

(Agent must sign here) —— —— Agent.

107 EXHIBIT "B".

D. W. Herring, Judge, C. L. Parrish, Clerk.

This examination must be made in private; no agent or third person being present.

Medical Examiner's Report to the Chicago Life Insurance Company.

To be filled out by the Medical Examiner only.

1. Personal History.

A. What is your full name? Rufus M. Cherry.

Give your place of Birth, and date of birth? Town ——; County, McNairy; State, Tenn; year, 1881; Month, July, Day 26; Age at nearest birthday, 25.

B. Residence? Henderson, Tenn., R. F. D. # 2.

C. How long have you lived in present locality? All life.

D. Do you contemplate any change in residence, (if so state why)? No.

E. Occupation? Farming.

F. How long have you been engaged in present occupation? All life.

G. Previous occupation? None.

H. Do you contemplate making any change in your occupation? No.

2. A. Are you now, or have you ever been, engaged in the manufacture, sale or handling of Wines, Spirits, or Malt Liquors? No.

B. Do you contemplate engaging in such occupation? No.

C. State particulars re A. and B. X.

3. A. Do you drink Wines, Spirits or Malt Liquors? No.

B. State kind, frequency and amount? None.

C. What is your highest daily average? None.

D. To what extent have you ever used them? None.

E. Have you ever been intoxicated within the last three years? No.

F. Do you use opium in any form, choral, cocaine, or other narcotics? No.

G. Have you ever been addicted to the use of these drugs? No.

H. Have you ever taken treatment, or been advised to take treatment for liquor or drug habit? No.

I. In what form and to what extent do you use tobacco? 1 or 2 smokes daily, pipe.

4. A. Have you ever been examined for life insurance by any Company or association without receiving a policy? No.

B. Name the Agent who induced you to make this application? G. G. Butler.

5. A. Are you now in good health? Yes.

B. Have you ever changed climate or occupation on account of your health? No.

C. Have you been, or are you now, under severe strain from business worries or family troubles? No.

D. Have you lost in weight within the last two years? No.

E. Have you gained in weight within the last two years? No.

F. If so, state how much and from what cause? X.

G. Have you ever had syphilis? If so, state particulars. No.

6. A. In the presence of a small pox epidemic do you agree to be vaccinated, at once, with active vaccine? Yes.

B. Are you ruptured? If so, or if you should become so, do you *No* agree to wear a properly fitted truss? Yes.

7. A. Has albumen or sugar ever been found in your urine? No.

B. Do you arise at night to urinate? No. If so how often? X.

C. Have you ever been under treatment at any asylum cure or sanitarium? No. If so, when, how long and for what? X.

D. Have you any prejudice or objection to the employment of a legally qualified physician in case of illness? No.

8. Health Record.—Answer yes or no to each question. State particulars of each affirmative answer under 9 blank space- below.

	Yes or no.
A. Dizziness, unconsciousness, epilepsy or convulsions of any sort? Paralysis? Apoplexy? or any disease of the nervous system?	No.
B. Headache—severe, protracted or frequent?	No.
C. Sunstroke?	No.
D. Discharge from ear or any other chronic discharges?	No.
E. Chronic or president cough, hoarseness, spitting or coughing of blood, asthma, shortness of breath, or any chest or lung disease?	No.
F. Pain in region of heart. Palpita-ion or heart disease of any kind?	No.
G. Fainting spells?	No.

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	Yes or No.
H. Dropsy, or swelling of the feet?	No
I. Dyspepsia or Indigestion?	No
J. Chronic or habitual Diarrhœa?	No
K. A-pendicitis, or severe, protracted or repeated intestinal colic?	No
L. Colic, due to renal or hepatic stone, or any derangement of the liver?	No
M. Hemorrhoids, fistula or any other disease of the rectum?	No
N. Any difficulty in urination?	No
O. Gravel, bladder or kidney disease?	No
P. Have you had any venereal disease?	No
Q. Stricture?	No
R. Malarial or other fever?	No
S. Rheumatism or gout?	No
T. Any chronic disease of the skin?	No
U. Cancer or tumors or ulcers of any kind?	No
V. Swelling of glands?	No

9. Name of disease, Chills: No. of attacks, 1; Date, 1905; Duration, 2 wks. Severity, mild; Result, good; Name and address of Medical Attendant, Dr. J. R. Carroll, Henderson, Tenn.

10. A. How long since you have been under the care of or consulted a physician? 1 year ago.
B. For what ailment? Chills.
C. Name and address of physician? Dr. J. R. Carroll, Henderson, Tenn.

11. Have you had any illness, ailment or injury not herein mentioned? (State particulars.) No.

12. A. Are you married? Yes.
B. If not, have you ever been married? X.
C. Date of marriage? 1905, Dec. 26th.

13. Family History:
Note.—In the family record, such terms as "Childbirth," "Change of Life," "Female Disease," "Exposure," "Effects of Accident," "Dropsy," "General Debility," "Old Age," "Hemorr-age," "Fair Health," and "Don't Know," will not be accepted without explanation. Duration of last illness should always be given. If health of any living member of the family is impaired, specify cause of impairment.

Husband—Wife. Wife: Age of living, 23; Condition of Health, good; Age at death, —; Cause of death, —; How long ill, —; previous health, —; Remarks and details, —.
Father: Age of living, —; Condition of health, —; Age at death, 57; Cause of death, Pneumonia; How long ill, 7 days; Previous health, good; Remarks and Details, —.
Mother: Age of living, 60; Condition of health, good; Age at death, —; Cause of death, —; How long ill, —; Previous health, —; Remarks and details, —.
4 Brothers: Age of living, 32, 22, 17, 39; Condition of health, good, good, good, good (respectively); Age at death, —; Cause of death —; How long ill, —; Previous health, —; Remarks and details, —.
6 Sisters: Age of living, 36, 34, 28, 30; Condition of health, —; Age at death, 35, 11; Cause of death, Measles, Dipththeria (respectively); How long ill, 2 wks., 3 days (respectively); Previous health, good, good; Remarks and details, —.

Father's Father: Age of living, — ; Condition of health, —; Age at death, 55; Cause of death, Pneumonia; How long ill, 10 days; Previous health, good; Remarks and details, —.

109 Father's Mother: Age of living, —; Condition of health, —; Age at death, 48; Cause of death, Typhoid Fever; How long ill, 2 weeks; Previous health, good; Remarks and details, —.

Mother's Father: Age of living, —; Condition of health, —; Age at death, 66; Cause of death, Accident; How long ill, X; Previous health, good; Remarks and details; Wagon run over him in a runaway.

Mother's Mother: Age of living, —; Condition of health, —; Age at death, 66; Cause of death, LaGrippe; How long ill, 3 wks.; Previous health, good; Remarks & details, —.

14. Which parent do you most resemble in appearance and constitution? Father?

15. Have you lived in the same house, or been closely associated, during the last five years, with anyone who had consumption? No. If yes, explain. X.

16. Have any members of your family, including aunts or uncles, ever had consumption, insanity, epilepsy, heart disease, apoplexy or any hereditary disease? No. If so, state relationship and particulars. X.

To Be Answered When Person Examined is a Woman.

17. A. Have you had any menstrual disorder, or symptoms of uterine or ovarian disease, or any disease or tumor of the breast?

B. Have you borne any children, and if so how many and how recently?

C. Have you suffered abortions or serious troubles in labor?

D. Date of marriage?

E. Are you now pregnant?

F. Have you passed the climacteric?

G. Are you engaged to be married within the next two years?

I warrant, on behalf of myself and of any person who shall have or claim any interest in any policy issued hereunder, each of the above answers to be full, complete and true, and that I am temperate, and to the best of my knowledge and belief in sound physical condition and a proper subject for life insurance.

I Expressly Waive, on behalf of myself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician or other person who has attended or examined me, or who may hereafter attend and examine me, from dosclosing any knowledge or information which he thereby acquired.

(Signature of the person applying for insurance.)

RUFUS M. CHERRY.

Witnessed by

J. W. BAIRD, M. D.,

Medical Examiner.

769-10M 904.

110 *Medical Examiner's Confidential Report to the Home Office.*

To be filled out by the Medical Examiner.

18. A. How long have you known applicant? 10 yrs.
B. What are his habits and general character? Good.
C. Are you related in any way to applicant or agent? No.
19. A. Has party the appearance of good health? Yes.
B. Apparent age? 25.
C. Complexion? Brunette.
D. Color of hair? Black.
E. Eyes? Brown.
20. A. Pulse rate seated? (Count one full minute.) 76.
B. Does it intermit? No.
C. Is it full, regular, and soft? Yes.
Note.—If pulse rate is over 80 or below 60 verify and state probable cause.

Physique: (151)

21. A. Weight, 151 pounds. B. Height, 6 ft. 3 inches. D. Figure? Stout, X. Muscular, X. Medium, X; Slim, Yes.
C. Are the weight and h-ight estimated, be exact? Exact.
E. Is party a Caucasion? Yes. (If not, what is his race?)
22. A. Measurements of chest at 4th rib on full inspiration? 34 inches. (The chest must be bared.) B. On full expiration? 31 inches.
C. Measurements of abdomen at level of umbilicus, 30 inches.

Nervous System:

23. A. Do you discover, upon examination or inquiry, any evidence of disease or functional derangement, past or present, of the brain, cord or nervous system? No. If so, state particulars. X.
B. Have you tested the eye and knee reflexes? Yes.
C. Are they normal? Yes.

Respiratory System:

24. A. Temperature? 98½. B. Number of respirations per minute? 19.
C. Are the respirations full, easy and regular? Yes.
25. A. Did you inspect the mouth and throat? Yes.
B. Is there any disease of nose, throat or mouth, middle ear, or eyes? No. C. Any hoarseness, cough or expectoration? No.
D. Did you find any abnormal variation in the precussion note, or respiratory murmur over either lung? No.
E. Any difficulty in breathing? No.

Circulatory System:

26. A. Is there any enlargement of the heart? No.
B. Is there any indication of disease of the heart? No.
C. Are the tones normal? Yes.
D. Is any sound accentuated? No.
E. Is there any atheroma of radical or temporal arteries? No.

Digestive System:

27. A. Has the applicant any disease of the liver, spleen, stomach or bowels? No. B. Is there any abdominal tenderness? No.

Urinalysis:

28. A. Are you sure the urine examined was passed by the applicant? Yes. If not, state particulars. X.
B. How long after a meal? 3 hours. C. Color? Straw.
D. Transparency? Normal. E. Any mucus present? No.
F. Any shreds, plugs or flakes? No. G. Specific gravity? 1022.
Explain a high or low Specific Gravity. X. H. Reaction? Acid.
I. Is Albumen present? No. J. Tests employed? Heat & acid.
(Use two standard tests for albumen.) K. Is sugar present? No.
L. Tests employed? Tromner's & Fehlings'.
29. Is there evidence of successful vaccination? No.
B. Are there any marks of small pox? No.
30. Describe any deformity, scar or other mark which would serve as a means of identification? None.
111 31. Are there any indications that this person is now or ever has been intemperate or addicted to the drug habit? No.
32. Are his residence and surroundings healthful and sanitary? Yes.
33. Did you discover or do, you know of any predisposition to local or constitutional disease? No.
34. Do you believe that applicant has given full and true information in all respects? Yes.
35. Was any third person present at this examination, contrary to the Company's rule? No. If so, who and why? X.
36. Do you believe there is any speculative or moral hazard connected with this risk? No.
37. What is your opinion of the applicant as an insurance risk? Good.
38. Have you reviewed all answers in this report? Yes. Be sure to initial all corrections, erasures and alterations.

I certify that I have carefully examined Mr. Rufus M. Cherry of Henderson, Tennessee, in private at his home this 28th day of August 1906; that I have carefully reviewed with him the foregoing questions in his examination for an insurance of $1250. on his life; that his "Answers made to the Medical Examiner" on the other side of this sheet are in my handwriting and are exactly as made by him to me, and that he signed them in my presence.

(Signed) J. W. BAIRD, M. D.,
Henderson, Tennessee, P. O. Address.

The examiner must send this report direct to the Home Office, 135 Adams Street, Chicago. Violation of this rule will be sufficient cause for dismissal.

Special Notice to Medical Examiner—The attention of the Medical Examiner is called to the fact that policies issued by this Com-

pany are free from all resptrictions as to travel, residence and occupation, and are incontestable from date of issue. Every endeavor should be made, therefore, to make this report as complete and prescise as possible, the object being to give the Executive Office a pen-picture of the applicant as he presents himself to you. If in addition, therefore, you know of any fact or have any impression not expressed above, that in your judgment would probably influence the executive office in its estimation of the risk, note it below.

Look this paper over carefully to make sure that all blanks are properly filled out.

When an examination is made by a physician who has not been regularly appointed, the Company's Credential Blank must invariably accompany the Report, otherwise no fee will be paid the examiner and the application will not be considered.

Remarks:

(4 blank lines.)

Reserved for use of Home Office.
Credentials of Examining Physician approved?
Action of Medical Board at Home Office.
Date of Action, 9/4/06.
Approved:
(Signed) T. E. ROBERTS, *Medical Director.*

112 (Back Covers.)

Exhibit "C" to bill of ex.

D. W. HERRING, *Judge,*
C. L. PARRISH, *Clerk.*

Chicago Life Insurance Company.

Rufus M. Cherry.

Special Guaranty Policy No. 10192.

Age 25, Amount $1,250. Annual Premium $31.83.

Insurance Year Begins on September 21st.

NOTICE.—It is not necessary for the legal owner to employ any one in collecting the insurance under this policy. Time and expense will be saved by writing direct to the Home Office Chicago.

89

1905—E.

Limited Payment Life Policy, Twenty Annual Premiums, Five Year Period Dividend Distribution.

(Northern Bank Note Co., Chicago.)

Register of Change of Mode of Payment of Proceeds of this Policy as a Death-claim.

NOTE.—Changes of mode of payment, and revocation of any change, must be requested in writing, and shall not take effect until endorsed on this policy by the Company at the Home Office.

Date Endorsed. How Payable. Endorsed by

Register of Change of Beneficiary.

NOTE.—No notice of change of beneficiary nor declaration of the absolute beneficiary shall take effect until endorsed on this policy by the Company at the Home Office.

Date Endorsed. Beneficiary. Endorsed by.

State of Illinois.

Insurance Department.

[SEAL.] SPRINGFIELD, ILLS., Oct. 27, 1906.

This policy is incontestable for the breach of any conditions as to or Securities Deposited with this Department.

W. R. VREDENBURGH,
Insurance Superintendent.

113 *Limited Payment Life Policy, 20 Annual Premiums, 5 Year Period Dividend Distribution.*

Chicago Life Insurance Company.

Agrees to pay Twelve Hundred Fifty Dollars, to Bertha Ripman Cherry, wife of the insured, or to such beneficiary as may have been duly designated at the Home Office of the Company, in the City of Chicago, immediately upon receipt and approval of proofs of the death of Rufus M. Cherry the insured, of Henderson, in the County of Chester, State of Tennessee.

This policy is incontestable for the breach of any condition as to residence, occupation, travel or place or mode of death. This policy participates in the profits of the Company as herein provided.

If the Insured is living at the end of ten years from date hereof, which is the end of the first dividend period, and of any

Cash Loans will be granted on the sole security of this policy on any anniversa
paid to the anniversary next succeeding the date when the loan is made.

Application for any loan must be made in writing to the Home Office of the Co
the Company's loan agreement. The amount of loan available at any time is state
ous loan then unpaid. Interest will be at the rate of five per cent. per annum in a

Table of Cash Loans and of Paid-up or Conti

After expiration of—	The cash loans and paid-up insura to a policy of $1,250, and, this p the cash loan (col. 1) or paid- available in any year *b*ill be the table below for that year.	
	Column 1, cash loans.	C
1 year	$820.00	
2 years	42.00	
3 "	64.00	
4 "	87.00	
5 "	111.00	
6 "	137.00	
7 "	163.00	
8 "	190.00	
9 "	218.00	
10 "	247.00	
11 "	278.00	
12 "	309.00	
13 "	342.00	
14 "	377.00	
15 "	412.00	
16 "	449.00	
17 "	488.00	
18 "	528.00	
19 "	570.00	
20 "	582.00	
21 "	595.00	
22 "	608.00	
23 "	622.00	
24 "	635.00	
25 "	649.00	
26 "	664.00	
27 "	678.00	
28 "	693.00	
29 "	707.00	
30 "	722.00	

To arrive at the amount of loan available in any year on policies of more than $1,250, multiply the amount stated herein opposite that year, as directed above.

For benefits at end of div

of this insurance, provided premiums are duly

any, and the loan will be subject to the terms of
column one (1) below, and includes any previ-
ance.

l Insurance.

stated below apply y being for $1,250, insurance (col. 2) ount stated in the	Column 3, $1,250 insurance continued for—	
nn 2, paid-up ins.	Years.	Months.
ne	0	1
54.00	2	1
29.00	4	5
94.00	7	6
50.00	9	9
25.00	12	9
90.00	15	9
95.00	18	10
21.00	21	6
88.00	23	11
52.00	25	11
20.00	27	9
81.00	29	4
52.00	30	10
18.00	32	2
85.00	33	6
50.00	35	0
16.00	36	10
83.00	39	5
50.00	Paid	Up

To arrive at the amount of paid-up insurance in any year on policies of more than $1,250, multiply the amount stated herein opposite that year as directed above.

The periods of continued insurance stated in this column apply to the amount of this policy and must not be multiplied or increased.

d periods see bottom of first page.

five year dividend period thereafter, and if the premiums have been duly paid to such date, and not otherwise, the Company will then apportion to this policy its share of the accumulated dividends as determined by the Company upon this "Special Guarranty" class of insurance, and the Insured shall have the choice of the following.

Dividend Settlements.

First. Receive the dividend in cash and continue the insurance in force for another dividend period, by the payment of premiums as required herein or

Second. Receive the entire cash value, as stated below, converted into a choice of benefits as set forth on the third page hereof; and discontinue this policy or

Third. Receive the entire cash value, as stated below, converted into paid up insurance, payable at death subject to evidence of insurability satisfactory to the Company, if such paid-up value be in excess of the face value of this policy, and discontinue this policy; or

Fourth. Receive the entire cash value, as stated below, in cash and discontinue this policy.

At the End of Each Dividend Period, the Company will send to the Insured a written statement of the results under each settlement. If a selection by the Insured of one of these settlements is not received by the Company at its Home Office in Chicago within thirty days thereafter, it will be assumed that the Insured desires to continue this policy under the first settlement for another dividend period of five years, and the cash dividend apportioned to this policy will be applied toward the payment of the premiums as they became due hereon. If no further premiums are required such cash dividend shall be held subject to the order of the Insured.

The Company guarantees that the entire cash value of this policy at the end of each of the following periods shall be the

Guaranteed reserve, end of ten years Two Hundred and Eighteen dollars, in cash.

Guaranteed reserve, end of fifteen years Three Hundred and Seventy-seven dollars, in cash.

Guaranteed reserve, end of twenty years Five Hundred and Seventy dollars, in cash.

Guaranteed reserve, end of twenty-five years Six Hundred and Thirty-five dollars, in cash.

Guaranteed reserved end of thirty years Seven Hundred and Seven dollars, in cash.

and at the end of every specified dividend period this policy's share of the accumulated profits then apportioned by the Company, also in cash.

(Here follows table of cash loans, etc., marked page 114.)

115 Cash Surrender.—In addition to the cash surrender values granted at the expiration of the several periods as specified at the bottom of the first page hereof, the cash loans above provid- may at any time be discharged upon the proper surrender of this policy to the Company, which will immediately cancel all obligations of the Insured by reason of such loan.

This policy is automatically non-forfeitable as follows:

If any premiums due herein is not paid when due, the sum, with interest in advance at the rate of five per cent. per annum, shall be charged against this policy as a loan, provided the loan value in excess of existing loans and unpaid interest be sufficient to pay the said premium with interest, and if not sufficient to pay the entire premium then due, a premium for a shorter period shall be charged but not less than an entire quarterly premium.

While this policy is continued in force under the premium loan agreement, the insured may without medical re-examination, resume the payment of premiums, and either repay the outstanding loan with interest, or permit same to stand upon signing a note for the amount and by the payment of interest thereon in advance at the rate of five per cent. per annum.

Paid-up and continued insurance values are available as follows:

First. Upon any anniversary of this insurance, if there is no indebtedness to the Company, this policy will upon receipt of written request from the Insured, be endorsed paid-up insurance for life for the amount designated in column two (2) of the foregoing table without medical re-examination.

Second. Upon any anniversary of this insurance, if there is an indebtedness to the Company, this policy will, upon receipt of written request from the Insured, be endorsed paid-up insurance for life for such amount as the reserve on this policy (American Experience Table of Mortality with 3% interest) in excess of such indebtedness will purchase according to the single premiums rates then employed by the Company, without medical re-examination.

Third. Upon any anniversary of this insurance, if there is no indebtedness to the Company, this policy will upon receipt of written request from the Insured, be continued in force as term insurance for the amount and time specified in column three (3) of the table above, and no longer.

The paid-up or continued insurance specified above shall be subject to the provisions of this policy, but without participation in profits, cash loans or further payment of premiums.

Grace in Payment of Premiums.—Prior to the going into effect of the non-forfeitable provision of this policy a grace of 30 days, during which the policy remains in full force, will be allowed in payment of all premiums, except the first, subject to an interest charge at the rate of five per cent. per annum.

(2nd Page L. P. Special Guaranty 1905, "E" Form 725.)

Benefits and Settlements.

The Insured at any time while this policy is in force, provided the policy is not then assigned, or the legal owner at the time the policy becomes a claim, if the insured has not filed for record at the Home Office of the Company a choice of benefits hereunder, may change the mode of payment of the proceeds, as set forth on the first page hereof, to a choice of settlements shown in benefits A, B, C, and D, below.

THIS PAGE BOUND VERTICAL IN BOOK

116 Benefit A.—Negotiable Interest-bearing C-upon Bonds.

In lieu of a single payment of an amount as indicated in the table below, or a multiple thereof, the Company will issue as of the due date of such single payment its bond guaranteeing the payment of $100.00, or a multiple thereof, at the expiration of twenty years, with interest thereon semi-annually from date of issue to maturity, at the rate specified in said table as follows:

For each $100.00 a bond of $100.00 bearing interest at the rate of 3½ per cent.
" " 107.15 " " 100.00 " " " " " " 4 " "
" " 114.30 " " 100.00 " " " " " " 4½ " "
" " 121.45 " " 100.00 " " " " " " 5 " "

Benefit B.—Individual Annual Life Income.

In lieu of a single payment of $100.00 or more, the Company will grant on *an* after one year from the due date thereof, to any one legally entitled thereto, the annual income which said single payment will purchase at its due date, on a basis of the annual income per $1,000.00 designated in the table below, opposite the then age at next birthday of the recipient of said income, which annual income will continue until twenty installments thereof are paid, regardless of the survival of the person upon whose life it is based, and thereafter during the entire life of such person.

Age.	Income.	Age.	Income.	Age.	Income.	Age.	Income.	Age.	Income.	Age.	Income.	Age.	Income.	Age.	Income.
20	$47.21	27	$49.41	34	$52.40	41	$56.33	48	$61.05	55	$65.73	62	$69.02	69	$70.27
21	47.29	28	49.78	35	52.90	42	56.96	49	61.75	56	66.32	63	69.32	70	70.32
22	47.77	29	50.18	36	53.42	43	57.61	50	62.45	57	66.87	64	69.57	71	70.34
23	48.07	30	50.58	37	53.96	44	58.28	51	63.14	58	67.38	65	69.79	72	70.35
24	48.38	31	51.01	38	54.53	45	58.96	52	63.82	59	67.85	66	69.96	73	70.36
25	48.71	32	51.45	39	55.11	46	59.65	53	64.48	60	68.29	67	70.10	74	70.36
26	49.05	33	51.92	40	55.71	47	60.35	54	65.12	61	68.68	68	70.20	75	70.36

Younger ages same as age 20. Older ages same as age 70.

Benefit C.—Joint Annual Life Incomes.

In lieu of a single payment of $100.00 or more, the Company will grant on and after on- year from the due date thereof, to any two or more persons legally entitled thereto, the annual income, payable to them jointly or severally, which said single payment will purchase at its due date, on a basis of the present rates of the Company per $1,000.00 of single payment for such annual income at the nearest ages at next birthday of the recipients; and annual income to continue until twenty installments thereof are paid, regardless of the survival of any of the persons upon whose lives it is bases, and thereafter during the life of the last survivor of them.

Benefit D.—Limited Payment Annual Income.

In lieu of a single payment of $100.00 or more, the Company will grant, on and after the due date of such single payment to any one legally entitled thereto, the number and amount of annual incomes on a basis of the rate per $1,000.00 as specified in the table below, regardless of the survival of any person interested therein.

Number of payments Guaranteed.....	5	10	15	20	25
Amount of annual income guaranteed...	$221	$120	$87	$70	$61

117 NOTE.—Any excess of the single payment over the aggregate sum applied toward the procurement of a settlement under any of the plans designated above may be withdrawn in cash at the due date of such single payment Gold Coin Payments. The proceeds of this policy under a single payment or under the terms of benefits "A" or "D" hereof, will be paid in gold coin of the United States of America, of current weight and fineness, provided all premiums required hereon are paid in like coin.

Privileges of Change.

Change of Beneficiary.—The Insured, having reserved the right, may change the beneficiary, or beneficiaries, at any time during the continuance of this policy, by written notice to the Company at its Home Office accompanied by this policy, provided this policy is not then assigned, or may declare any beneficiary then named to be an absolute beneficiary under this policy. No designation, or change of beneficiary or declaration of an absolute beneficiary shall take effect until endorsed on this policy by the Company at its Home Office. During the life time of an absolute beneficiary the right to revoke or change the interest of that beneficiary will not exist in the Insured. If there is no nominated beneficiary living at the death of the Insured, the amount due under this policy shall be paid to the executors, administrators or assigns of the Insured.

Change in Premium Payments.—The mode of the premium payment may be changed on any anniversary date from annual to semi-annual or quarterly, or vice-versa, at the premium rates in use by

the Company at the date hereof, but the payment of any premium shall not have the effect to continue this policy in full force longer than for the same time specified in the receipt therefor.

Change in Plan and Amount.—On the written request of the Insured while this policy is in force by the payment of premium if not assigned, it may, without medical re-examination, be changed on the basis of the premium rates now in use by the Company, as follows:

(1) As of the date when the change occurs, to a less amount on the same plan, by the endorsement of the transaction on the policy by an authorized Officer of the Company, or

(2) As of the date when the change occurs, to a different plan of a like or less amount with the same or a higher rate of premium per $1,000.00.

(3) As of the date hereof, to a different plan of a like or less amount, with the same or a higher rate of premium, by the satisfactory adjustment of the back difference in premium, if any there be, with interest at the rate of five per cent per annum to date of change.

General Provisions.

(1) Only the President, a Vice President, or the Secretary has power, in behalf of the Company, to make or modify this or any contract of Insurance, or to extend the time for paying any premium, and the Company shall not be bound by any promise or representation heretofore or hereafter made by any person other than the above. (2) Premiums are due and payable at the Home Office, unless otherwise agreed in writing, but may be paid to an agent producing receipts signed by one of the above named officers and countersigned by the agent. If any premium is not paid on or before the day when due, or within the thirty days of grace, as herein provided, the liability of the Company shall be only as hereinbefore provided for such case. (3) If the age of the Insured is understated, the amount payable under this policy shall be the insurance which the actual premium paid would have purchased at the true age of the Insured. Age will be admitted on satisfactory proof. (4) In any distribution of surplus, or apportionment of profits, the principles and methods which may be adopted by the Company for such distribution or apportionment, and its determination of the amount equitably belonging to this policy, shall be conclusive upon the Insured and upon all parties having or claiming any interest under this policy. (5) Any indebtedness to the Company, including any balance of the premium for the insurance year remaining unpaid, will be deducted in any settlement of this policy, or of any benefit thereunder. (6) Any assignment of this policy must be made in duplicate and both sent to the Home Office, one to be retained by the Company and the other to be returned. The Company has
118 no responsibility for the validity of an assignment. (7) For the first year of insurance, this policy is accepted by the In-

sured with the understanding and agreement that the insurance for that year is upon the term plan. (8) If within one year (1) from the date hereof, the Insured shall die by self destruction, whether sane or insane, the liability of the Company shall not exceed the amount of the premiums paid on this policy.

The insurance under this policy takes effect as of the Twenty-first day of September Nineteen Hundred and Six, and the insurance year, the dividend period, the paid-up and extended insurance, the loan and non-forfeiture provisions all relate back to that date.

This agreement is made in consideration of the sum of thirty-one and 83/100 ($31.83) Dollars, constituting payment for the period terminating on the Twentieth day of September, Nineteen Hundred and Seven, on the basis of term insurance and in further consideration of the payment thereafter of Thirty-one and 83/100 Dollars on September Twenty-first in every year during the continuance of this policy, until premiums shall have been paid for twenty years from September 21st, Nineteen Hundred and Six.

In witness whereof the Chicago Life Insurance Company has caused this agreement to be signed by its proper officers.

LA VORNE NOYES,
President.

(Signed) CARL T. PRIME,
Assistant Secretary.

Examined W. R. W.

(3rd Page, L. P. Special Guaranty 1905, "E" Form 725.)

119 Telephones, Central 2988, Automatic 4988.

Federal Life Insurance Company.

Office of Isaac Miller Hamilton, President.

CHICAGO, September 22, 1906.

To the Policy Holders of the Chicago Life Insurance Company:

You hereby are notified that the Federal Life Insurance Company has reinsured and guaranteed the policy contracts of the Chicago Life Insurance Company which were in force upon living policy holders at twelve o'clock noon standard central time, September 22, 1906.

There is no change in any of the terms of the policy contracts nor in the amount of premiums or time of payment of the same.

Your policy No. 10192 in the Chicago Life will be known hereafter as Federal No. 15587. Please refer to this latter number should you have occasion to write us relative to your policy contract.

Hereafter please remit all premiums direct to the Home Office of this Company.

The Federal is and always has been an "old line" legal reserve

company. It is a marked example of a phenomenally successful company. It always has been ably, conservatively and vigorously managd. It redeems its promises promptly according to their letter and spirit; it pays its death claims immediately upon approval and treats its beneficiaries courteously and equitably. There is no better company on earth than the Federal. It has approximately $15,000,000 of high-grade insurance in force and $900,000 of assets.

I trust you will continue your policy contracts in this excellent company for many years to come. We shall be glad to serve you promptly at any and all times in any proper way in our power.

Respectfully,

ISAAC MILLER HAMILTON,
President.

NOTE.—Should this letter be sent to anyone not entitled thereto the Federal does not thereby admit nor assume any obligation.

120 La Verne Noyes, President.
M. J. Carpenter, Sec. & Treas.

Chicago Life Insurance Company,
135 Adams Street, Chicago.

September 22, 1906.

To the Policy Holders of the Chicago Life Insurance Company:

On this date the policy contracts of the Chicago Life Insurance Company were reinsured by the Federal Life Insurance Company of Chicago. The reinsurance contract protects the policy holders absolutely. All conditions of their policy contracts are guaranteed fully by the Federal without any change in the premium rates. The Chicago Life was perfectly solvent, and might easily have continued in business had the directors been able to give the business their personal attention, but, as they were not, it was decided unanimously, after careful consideration, to reinsure the risks in the Federal.

The reinsurance in the Federal is a very advantageous one for the policy holder. Careful investigation has demonstrated that the Federal is the peer of any legal reserve company in existence. It is officered and managed by men of the highest character and ability, who are skilled in the science of life insurance, and who devote their entire time and abilities to the services of their excellent company.

We thank each of our policy holders for the support and patronage accorded our company, and hope each of you will continue your policy in the Federal. We feel sure we have safeguarded your every interest and that of your beneficiaries, and that you will never have reason to regret the reinsurance of your policy by the Federal.

If at any time we can serve you in any manner pertaining to your insurance in the Federal, we shall be very happy to do so.

Respectfully,

LA VERNE NOYES,
President.
M. J. CARPENTER,
Secretary.

121 *Bill of Cost.*

Biggs & Spragins, Lawyers, Jackson, Tenn.

State tax, $2.50, County tax, $2.50	5.00
Clerk. Filing 25, docketing 30, issuing 2 summons $1.50, certified copy of writ 25, Filing plea in abatement 25, 1 con. 25, filing declaration 25, issuing 2 subpœnas to plaintiff 20, filing amendment to declaration 25, registering letter 10, filing pauper oath 25, bond 25, filing plea in abatement 25, filing notice 25, filing demurrer 25, filing 5 exhibits $1.25, filing plea of plaintiff to defendant, 25, issuing 1 subpœna to plaintiff 10, filing order sustaining demurrer 25, Taxing cost Ex. Docket 50, Dismissing abatement Federal Life Ins. Co. 25, Judgment 75¢	8.20
Transcript and seal	9.50

Sheriff B. F. Weir:

Executing 1 summons $1.00, 2 subpœnas 50¢	1.50
C. C. C. J. B. Crook, Executing 1 subpœna	.25
Jas. B. McKee, Notary Public	.50
Albertine E. Hathaway, Notary Public	.50
Witness, J. W. Baird, 2 days	2.00
" Jno. Cherry, 1 day	2.00
" G. G. Butler, 1 day $1.50, out of county 144 miles at 5¢	8.70
S. E. Reid, 1 day, 10 miles	1.40
	$39.55

I, C. L. Parrish, Clerk of the Circuit Court of Chester County, do certify that the foregoing is a true and perfect transcript of the records and bill of cost remaining in my office in the case of Mrs. Bertha R. Cherry vs. Chicago Life Insurance Company, et al. given under my hand and seal of office, this 26th day of December 1908.

[SEAL.]

C. L. PARRISH,
Circuit Court Clerk.

122 *Memorandum Opinion.*

Filed Jan. 23, 1909.

Chester Law.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE COMPANY et al.

Opinion.

I.

This suit was instituted by Mrs. Bertha R. Cherry in the Circuit Court of Chester County to recover from the defendants, the Chicago Life Insurance Company and the Federal Life Insurance Company, on a policy of $1,250, insuring the life of Rufus M. Cherry, the beneficiary therein named being the plaintiff.

Judgment was rendered in the Court below in favor of the plaintiff for the amount of the policy and interest thereon, as well as the penalty provided by the Act of 1901.

From the judgment aforesaid the defendants prayed and perfected an appeal to this Court and have assigned errors, raising two legal propositions as to the validity of the service of process as to each of said defendants.

The writ as to both defendants was issued to the Sheriff of Davidson County, but it was not executed by him upon either defendant, both of which are non-residents of Tennessee, though the Chicago Life Insurance Company had complied with the laws of the State as to foreign corporations doing business in Tennessee, and had license as such. The process as to this Company was acknowledged by Reau E. Folk, Insurance Commissioner in the following words:

"By virtue of the authority in me vested, I have today acknowledged service of the within summons for the Chicago Life Insurance Company.

"This 20th day of May, A. D. 1907 at 11 o'clock A. M.

(Signed) REAU E. POLK,
Insurance Commissioner."

123 Subsequently alias process was issued to the Sheriff of Chester County for the Federal Life Insurance Company, it appearing in the writ that said Company was a foreign corporation. This writ was executed, as the return of the Sheriff shows, as follows:

"Executed as within directed by reading the same to G. G. Butler, Agent of the Federal Life Insurance Company, or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued upon, and who was the agent of the Chicago Life Insurance Company, and it being the agent of the Federal Life In-

surance Company in the delivery of the policy sued upon, and represented said corporation at the time.

"This 24th day of June, 1907.

B. F. WEIR,
Sheriff of Chester County."

Notice of the service of said process was duly and regularly given said Federal Life Insurance Company by Chas. O. Loucks, as the agent and attorney of said Mrs. Cherry, as appears from the copy of the notice in the record and the affidavit of said Loucks, who left a copy thereof with the return of the Sheriff thereon with Chas. O. Atkinson, Vice President of said Company, on the 29th of June, 1907, at its home office in Chicago, Illinois.

The Chicago Life Insurance Company pleaded in abatement to the jurisdiction of the Court on the following grounds:

1st. "The said writ or summons is addressed to the sheriff of Davidson County and not Chester County, in which the said suit is instituted, and does not show that it is a counterpart summons, or that there is a defendant who has been served with process in Chester County;

2nd. "The writ or summons shows upon its face that it was never served upon Reau E. Folk, Insurance Commissioner, by the Sheriff of Davidson County, but that the service of process is acknowledged in behalf of the Chicago Life Insurance Company by said
124 Commissioner.

"The Acts of 1895, Chapter 160, Sect. 9, sub-sect. 3, requiring a foreign Insurance Company to file a power of attorney with the Insurance Commissioner constituting him an agent upon whom process may be served does not authorize the Commissioner of Insurance to acknowledge service of process on behalf of foreign Insurance Companies, but expressly provides that such process must be served upon such Commissioner by the officer of the County in which the Commissioner may have his office.

3rd. "The said Insurance Commissioner was not in the County of Chester at the time that the writ or summons was issued, and was not in Chester County at the time he acknowledged service of process on behalf of this defendant.

"Under the above Act authorizing the service of process upon the Commissioner, he is made the statutory agent of the defendant and merely stands in the place of the defendant. For this reason the suit must be brought in the County where the Commissioner lives, and where he has his office, and can not be brought in a County where he does not live and has no office, and when he is not in the County either at the time said writ or summons was issued or at the time that he acknowledged service of process for defendant.

"This defendant, therefore, asks that the writ or summons in this case be quashed and abated, and that this suit be dismissed."
125 The Federal Life Insurance Company pleaded in abatement to the jurisdiction of the Court as follows:

"The summons or writ shows that it was served upon one G. G. Butler, who was designated as agent of the Federal Life Insurance

Company, or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued on.

"This is attempted service under Sections 4545 and 4546 of Shannon's Code of this State, providing that service of process can be had upon a foreign corporation by service upon the agent who represented the corporation at the time of the transaction out of which the suit arose.

"The defendant, Federal Life Insurance Company, states that said Butler was not its agent at the time that this application for this policy was taken out, not at the time that this policy was delivered. The said Butler has never been the agent of the Federal Life Insurance —, and the Federal Life Insurance Company has never had any relation with said Butler in any way whatever.

"The Federal Life Insurance Company has never done busisess in this State, and has never been licensed to do business in this State, and, therefore could not have had an agent here who was authorized either to solicit applications or to deliver policies.

"For these reasons the defendant, Federal Life Insurance Company, prays that the writ or summons in this case be quashed and the suit abated."

The plaintiff demurred to the plea in abatement filed by the Chicago Life Insurance Company on the following grounds:

126 1. "Because none of the reasons assigned in the plea in abatement in this case for want of proper service of process on the defendant Chicago Life Insurance Company are sufficient to show want of legal service;

2. "Because from the facts appearing from the process issued and returned, and from the allegations stated in said plea, the Chicago Life Insurance Company has been legally and properly served with process, and is properly before the Court."

The plaintiff filed her replication to said plea of the Federal Life Insurance Company denying the averments therein contained.

The court sustained the demurrer to the plea of the Chicago Life Insurance Company and overruled the plea, and gave that defendant leave to further defend the suit. Whereupon counsel for said defendant stated in open Court that he was not authorized to represent said defendant further.

The issues of fact under the plea in abatement of the Federal Life Insurance Company and the replication thereto were submitted to the Court without the intervention of a jury and were found in favor of the plaintiff, and said plea in abatement was overruled with leave to make further defense. Whereupon counsel stated he was not authorized to further represent the defendant.

Said defendants were then solemnly called to come into Court, and having failed to do so, the cause was submitted to a jury to assess the damages claimed by plaintiff in her declaration resulting in a verdict and judgment in her favor for $1,666.25 and the cost of the cause.

127 II.

The first error assigned is to the action of the Court in sustaining the demurrer to the plea in abatement of the defendant Chicago Life Insurance Company.

It is insisted:

1st. That the suit having been brought in Chester County the summons could not be directed to the sheriff of Davidson County, and that, therefore, service upon the agent of that Company in Davidson County did not confer jurisdiction upon the Circuit Court of Chester County.

2nd. That the process was not served by the proper officer on the Insurance Commissioner, but that it was acknowledged by him; and inasmuch as the statute does not authorize the Commissioner to acknowledge service, the service in this case was ineffectual to confer jurisdiction.

Section 9, sub-section 3 of Chapter 160 of the Acts of 1895, relating to the service of process upon foreign Insurance Companies doing business in Tennessee is as follows:

"It shall, by duly executed instrument filed in his office, constitute and appoint the Insurance Commissioner, or his successor, its true and lawful attorney, upon whom all lawful processes in any action or legal proceeding against it may be served, and therein shall agree that any lawful process against it, which may be served upon its said attorney, shall be of the same force and validity as if served
128 on the company, and that the authority thereof shall continue in force, irrevocably, as long as any liability of the Company remains outstanding in this State.

"Any process issued by any Courts of record in this State, and served upon such Commissioner by the proper officer of the county in which said Commissioner may have his office, shall be deemed a sufficient process on said Company, and it is hereby made the duty of the Insurance Commissioner, promptly after such service of process by any claimant, to forward, by registered mail, an exact copy of such notice to the Company."

The first contention, that the suit having been brought in Chester County the summons could not be issued to the sheriff of Davidson County, is unsound.

The sub-section of the Act just above quoted in express terms provides that any process issued by any of the courts of record of this State and served upon such Commissioner by the proper officer of the County in which such Commissioner may have his office, shall be deemed a sufficient process on said Company, etc. The object of this provision is to enable parties having claims against foreign Insurance Companies which have complied with the laws of the State to bring suits in their own counties. This construction and meaning of this part of the statute is so apparent that further discussion of it need not be indulged in.

The contention also that process was not served by the Sheriff of Davidson County upon the Insurance Commissioner, but was acknowledged by him is likewise untenable.

It is to be observed that the Commissioner of Insurance in
129 said acknowledgment states that it is "by virtue of the authority vested in me, I have to-day acknowledged service," etc. It is insisted that the law does not confer upon the Insurance Commissioner authority to acknowledge service, but that service must be made upon him by the sheriff of the county, and that the settled rule of law is, that where special power is given it must be strictly so construed, and unless it is so construed the party is not bound.

We are of opinion in the first place that this question is not raised by the plea in abatement, which fails to aver that the Chicago Life Insurance Company did not authorize the Insurance Commissioner to acknowledge service for it. It appearing from the return of the Insurance Commissioner that he was authorized to acknowledge service, the plea in abatement should have put this fact in issue.

It is a well settled practice in Tennessee that pleas in abatement, being dilatory in their character and not intended to reach the merits of the case, must be strictly construed, and unless they are sufficient in every respect in form and in substance they will be overruled.

Settle v. Settle, 10 Hump., p. 504.
Baker v. Compton, 2 Head., p. 470.

Even though the above mentioned Act provided a method by which persons might be served, it was entirely competent for this or any other Insurance Company to confer upon the Insurance Commissioner the power and authority independent of the statute to acknowledge service of process, and the plea in abatement was defective because it did not put in issue the fact stated in the acknowledgment that the Insurance Commissioner was authorized to acknowledge service.

It is insisted, however, aside from this question, and
130 numerous authorities from other jurisdictions are referred to in support of the proposition, that where the statute prescribes that process must be served on the Commissioner that the provision is mandatory, and that an acknowledgment of service by him is insufficient to bring the Insurance Company into Court.

We have been referred by the learned counsel for the defendants to a number of authorities from other States in which this view of the question has been upheld. These authorities are entitled to due consideration, but the Supreme Court of our own State has taken the contrary view, which we think is in accord with reason and a sound public policy.

In the case of Patton v. Casualty Company, 11 Cates, p. 373, the Court, speaking through Mr. Justice Neil said:

"In the present case the service of process was acknowledged by the Insurance Commissioner, and on the principle already stated, we are of opinion that the service was properly made, and that the Company was brought before the Court."

It is insisted that this identical question was passed upon by Judge Tyler of the First Circuit Court of this State, in the case of Willard v. Employers' Liability Company, and that his Honor held that the Commissioner had no authority to acknowledge service of process.

It appears from the brief of learned counsel that a portion of the opinion of Judge Tyler is as follows:

"The question arising under the plea in abatement filed by defendant, and the demurrer thereto, is whether the Insurance
131 Commissioner, pursuant to the power of attorney lodged with him—assuming that such power of attorney was no broader than required by statute—had the authority to accept service of process," etc.

As we understand this excerpt from the Court's opinion, the question now before us is expressly reserved by the statement of his Honor that "assuming that such power of attorney is no broader than required by statute," etc. See also Mutual Reserve Fund Life Association v. Tuchfield, Adm'r, 86 C. C. A., p. 660.

This assignment of error must, therefore, be overruled.

III.

The Federal Life Insurance Company assigned as error the action of the Court in overruling its plea in abatement:

1st. On the ground that service of process upon G. G. Butler, who it is alleged was not its agent in any sense, was not binding upon the Company; and,

2nd. That there is no evidence in the record to support the finding of the Court on the plea in abatement.

The policy of insurance sued on was dated and issued September 21st, 1906. It appears from a letter addressed by the Federal Life Insurance Company to the policy holders of the Chicago Life Insurance Company September 22nd, 1906, that on that date the
132 former company entered into a contract with the latter, reinsuring and guaranteeing the policy contracts of the Chicago Life Insurance Company which were in force at noon, Standard Central time, September 22nd, 1906. This letter notified Mr. Cherry that his policy number in the Chicago Life was 10192, and that hereafter it would be numbered 15587 in the Federal Life.

On the same day the Chicago Life addressed a letter to its policy holders stating that the policy contracts of that Company were reinsured by the Federal Life. It further stated that this Company was perfectly solvent, but that on account of the inability of the directors to give the Company their personal attention, it had been unanimously decided to reinsure the risks in the Federal Life. In other words, this was not simply the reinsurance of Mr. Cherry in the Federal Life, but it was in effect the turning over of all the business of the Chicago Life to the Federal.

These two letters were attached to the policy when it was delivered to Mr. Cherry.

It further appears that G. G. Butler, upon whom process was served as to the Federal Company, was the agent for the Chicago Life Insurance Company in soliciting the policy issued in this case, and that the application was taken on one of the blanks of that Company.

This witness never solicited insurance for the Federal, and it ap-

pears that that Company has never been licensed to do business in this State.

The policy was sent by the Chicago Life to its general agent for the State, W. L. Looney, of Nashville; and upon notice from Mr. Butler, Mr. Looney sent the policy to J. W. Baird for delivery to the
133 assured as the witness Butler expected to be absent from Henderson, Tennessee, where both he and the assured resided.

After the death of Mr. Cherry the witness Butler was authorized by the Federal Life Insurance Company to submit a proposition of compromise to the plaintiff; and for that purpose he went to her residence, several miles in the country, to make said settlement. He had in his possession at the time the check of the Federal Life Insurance Company for the amount it was willing to pay Mrs. Cherry in settlement, but he was unable to effect a settlement as Mrs. Cherry declined to accept the sum offered.

It appears that Mr. Looney was the collecting agent of the Federal, and was collecting premiums due it on the business of the Chicago Life it reinsured; and that there were quite a number of policy holders in Chester County that were insured by the Chicago Life, and who continued to pay their premiums to the Federal Life Insurance Company up to the date of the trial.

Upon these facts, we are of opinion that said Butler was the agent of the Federal Life Insurance Company in the sense that service upon him would be sufficient to bind that Company.

In the case of Life Insurance Company v. Spratley, 15 Pickle, p. 324, the Supreme Court held that service, under facts almost identical with the facts in this case, was good under Chapter 226 of the Acts of 1887, brought forward into the Code (Shannon) at Section 4543 to and including 4546.

This Spratley case was subsequently carried to the Supreme Court of the United States, where it was affirmed.

Spratley v. Conn. Mut. Life Ins. Co., 172 U. S., p. 611.
134 See also State v. Insurance Company, 22 Pickle, pp. 291-292.

There is no error in the judgment of the Court below, and it is affirmed with costs.

PALMER, *Judge.*

135 THE STATE OF TENNESSEE:

I, John W. Buford, Clerk of the Court of Civil Appeals of said State for the Western Division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect and complete copy of the Opinion pronounced by said Court at its January Term, 1909, in the case of Chicago Life Insurance Company and Federal Life Insurance Company against Mrs. Bertha R. Cherry, as appears of record now on file in my office. In testimony whereof, I have hereunto set my hand and affixed the seal of the Court, at office, in the city of Jackson, on this, the 3 day of November, A. D. 1909, and of the Independence of the United States the 133 year.

(Sgd.) JNO. W. BUFORD, *Clerk,*
[SEAL.] By —— ——, *D. C.*

#1, Chester. Law.

CHICAGO LIFE INSURANCE CO. and THE FEDERAL LIFE INSURANCE CO.
vs.
MRS. BERTHA R. CHERRY.

Biggs & Spragins, Lawyers, Jackson, Tenn.

This cause was heard upon the transcript of the record from the Circuit Court of Chester County, and it appearing to the Court that in the judgment of the Court below there is no error, the same is in all things affirmed.

It is therefore ordered and adjudged, that the defendant in error, Mrs. Bertha R. Cherry, have and recover of the Chicago Life Insurance Co. and the Federal Life Insurance Co. jointly and separately, the sum of One Thousand Six Hundred Sixty-six and 25/100 ($1,666.25) Dollars and the cost of the court below and of them and Moreau P. Estes, security on writ of error bond the further sum of Ninety-five and 79/100 ($95.79) Dollars, interest on said judgment from the date of the rendition below to this date, together with the costs of the appeal, for all of which let execution issue.

Thereupon the Court adjourned until Monday morning at 9 o'clock.

R. M. BARTON, JR.
JNO. M. TAYLOR.
A. B. LAMB.
H. E. PALMER.
S. F. WILSON.

M. B. 2, Page 31, Jan. 23, 1909.

136 THE STATE OF TENNESSEE:

I, John W. Buford, Clerk of the Court of Civil Appeals of said State for the Western Division thereof, at Jackson, do hereby certify that the foregoing is a true, perfect and complete copy of the Judgment pronounced by said Court at its January Term, 1909, in the case of Chicago Life Insurance Co. and Federal Life Insurance Co. against Mrs. Bertha R. Cherry, as appears of record now on file in my office. In testimony whereof, I have hereunto set my hand and affixed the seal of the Court, at office, in the city of Jackson, on this, the 3 day of November, A. D. 1909, and of the Independence of the United States, the 133 year.

(Signed) JNO. E. BUFORD, *Clerk*,
[SEAL.] By —— ——, *D. C.*

STATE OF TENNESSEE,
Madison County:

I, J. W. Buford, Clerk of the Court of Civil Appeals, of the State of Tennessee, do hereby certify that I am the keeper of the records and files of said court, and that the foregoing is a true, perfect and

correct copy and transcript of the record and proceedings in the case of Chicago Life Insurance Co. and the Federal Life Insurance Co., plaintiffs in error against Mrs. Bertha Cherry, defendant in error, on file, and as appears of record in my office as Clerk of the Court of Civil Appeals of Tennessee, including a true and correct copy of the bill of costs in said cause.

Witness my hand and seal of the Court of Civil Appeals of Tennessee this the 3 day of November, 1909.

[SEAL.] (Signed) JNO. W. BUFORD, *Clerk.*

STATE OF TENNESSEE,
Madison County:

I, R. M. Barton, Jr., Presiding Justice of the Court of Civil Appeals of Tennessee, do hereby certify that J. W. Buford, whose genuine signature appears to the above certificate was on the 31st day of December, 1908, and continuously thereafter up to the present time, and now is the true and lawful clerk of the Court of Civil Appeals of Tennessee, duly commissioned and qualified. That Court is a court of record having a clerk and seal, and that his acts as such Clerk of said Court are entitled to full faith and credit and that the attestation is in due form of law.

Witness my hand and seal, this the 3 day of November, 1909.

[SEAL.] (Signed) R. M. BARTON, JR., [SEAL.]
Presiding Justice of the Court of Civil Appeals of Tennessee.

STATE OF TENNESSEE,
Madison County:

I, J. W. Buford, Clerk of the Court of Civil Appeals of the State of Tennessee, (said Court being a Court of Record) do hereby certify that R. M. Barton, Jr., whose genuine signature appears above, is the true, lawful and constitutional Presiding Justice of the Court of Civil Appeals of the State of Tennessee, duly elected, commissioned and qualified as such.

137 Witness my hand and seal of the Court of Civil Appeals of the State of Tennessee, this 3 day of November, 1909.

(Signed) JNO. W. BUFORD,
Cl'k *Clerk Court of Civil Appeals of the State of Tennessee.*

Pleas Before the Supreme Court of said State, for the Western Division Thereof, at the April Term, A. D. 1909.

Present: The Hon. W. D. Beard, Chief Justice, and B. D. Bell, W. K. McAlister, M. M. Neil and Jno. K. Shields, Associate Judges, when the following proceedings were had, to-wit:

April 29, 1909.

Court met pursuant to adjournment. Present and presiding the Honorable W. D. Beard, Chief Justice, and W. K. McAlister, M. M.

Neil, John K. Shields, and B. D. Bell, Associate Justices, when the following proceedings were had, to-wit:

138 In the Supreme Court of the State of Tennessee, at Jackson.

CHICAGO LIFE INSURANCE CO. and FEDERAL LIFE INSURANCE CO.
vs.
BERTHA R. CHERRY.

Petition for Certiorari.

Filed April 17, 1909. J. W. Buford, Supreme Court Clerk, by J. E. Springbett, D. C.

To the Honorable Supreme Court of the State of Tennessee:

Your petitioners, the Federal Life Insurance Company and the Chicago Life Insurance Company, do respectfully request that a writ of certiorari be issued by your Court in this case removing these proceedings into this Supreme Court for the purpose of review of the erroneous action of the trial Court and of the Court of Civil Appeals thereon. They allege as their grounds for the issuance of the said writ of certiorari the following:

History of Case.

On the 21st day of September, 1906, the Chicago Life Insurance Company issued a policy upon the life of Rufus M. Cherry, the husband of the defendant in error, under which they contracted to pay the sum of $1,250. During the same year the assured died, and proofs of loss having been made and payment refused, Mrs. Cherry, upon the 15th day of May, 1907, brought suit in the Circuit Court of Chester County against the Chicago Life Insurance Company and the Federal Life Insurance Company.

Service of the summons in this case was attempted for the Chicago Life Insurance Company by acknowledgment of the
139 Insurance Commissioner of the State, but under this process no service was secured upon the Federal Life Insurance Company. Thereafter, on June 24th, 1907, summons was issued against the Federal Life Insurance Company and attempted to be served by reading the same to G. G. Butler.

Tr. pp. 10 and 11.

A declaration was filed by the plaintiff on the 28th day of May, 1907, (Tr. pp. 4-9), and an amended declaration was filed on August 14th, 1907, after the service upon G. G. Butler as agent for the Federal Life Insurance Company.

Tr. pp. 12-18.

Different and independent pleas in abatement were filed to this suit by each of the defendants, the grounds of which will be par-

ticularly considered in the assignments of error hereafter set forth, as the disposition of the entire suit depends upon the consideration of these pleas in abatement.

Tr. pp. 18-23.

The Plaintiff below demurred to the plea in abatement of the Chicago Life Insurance Company, which demurrer was sustained by the trial Judge.

Tr. p. 24.

The plaintiff filed a replication to the plea in abatement of the Federal Life Insurance Company, and this plea in abatement was heard upon evidence, and judgment rendered in favor of the plaintiff upon the same.

Tr. p. 25.

After the sustaining of the demurrer to the plea in abatement of the Chicago Life and the finding against the plea in abatement of the Federal Life, these Companies were directed to plead further, whereupon their counsel announced that he was not au-
140 thorized to further represent them, with the result that judgment was taken for the face of the policy, interest and a penalty of 25%. It will be noted that when the case was submitted to the jury for the ascertainment of the amount of the penalty or damages, the jury was of the opinion that the penalty should not be in excess of 15%, and so found. Whereupon the plaintiffs immediately filed a motion for a new trial, which was granted and another jury immediately empaneled, with instructions, or what was tantamount to such instructions, to bring in a penalty of 25%, which they accordingly did.

See order, Tr. pp. 29-31.

The Court of Civil Appeals affirmed the action of the trial Judge in all respects, filing a written opinion, and the plaintiffs in error now file this petition, and hereby assign as grounds for the issuance thereof, the following errors:

I.

Assignments of Error for the Chicago Life Insurance Company and Brief Thereon.

The court erred in sustaining the demurrer to plea in abatement of Chicago Life Insurance Co.

This plea in abatement was as follows:

"(1) The said writ or summons is addressed to the Sheriff of Davidson County and not Chester County, in which the said suit is instituted, and does not show that it is a counterpart summons, or that there is a defendant who has been served with process in Chester County.

"(2) The writ or summons shows upon its face that it was never

served upon Reau E. Folk, Insurance Commissioner, by the Sheriff of Davidson County, but that the service of process is acknowledged on behalf of the Chicago Life Insurance Company by the said Commissioner.

"The Acts of 1895, Chapter 160, Section 9, Sub-sec. 3, requiring a foreign insurance company to file a power of attorney with the Insurance Commissioner, constituting him an agent upon whom process may be served, does not authorize the Commissioner of insurance to acknowledge service of process on behalf of foreign insurance companies, but expressly provides that such process must be served upon such Commissioner by the proper officer of the County in which the Commissioner may have his office.

"(3) The said insurance Commissioner was not in the County of Chester at the time that the writ or summons was issued and was not in Chester County at the time *the* he acknowledged service of process on behalf of this defendant. Under the above Act authorizing the service of process upon the Commissioner, he is made the statutory agent of the defendant, and merely stands
141 in the place of the defendant. For this reason the suit must be brought in the County where the Commissioner lives and where he has his office, and cannot be brought in a county where he does not live and has no office, and when he is not in the county either at the time the said writ or summons was issued, or at the time he acknowledged service of process for defendant. This defendant, therefore, asks that the writ or summons in this case be quashed and abated and this suit dismissed."

Tr. pp. 18-20.

The record shows that the summons, which it was thus attempted to quash, was issued out of the Circuit Court of Chester County and directed to the Sheriff of Davidson County and was taken before the Insurance Commissioner of the State who acknowledged service of same by the following endorsement placed upon this writ:

"By virtue of the authority in me vested, I have today acknowledged service of the within summons for the Chicago Life Insurance Company, this 20th day of May, A. D., 1907, at 11:30 A. M."

"(Signed) REAU E. FOLK,
Insurance Commissioner.

Two Special grounds of objection are urged why the attempted service should be quashed:

(1) The writ was issued by the Circuit Court of Chester County and was directed to the Sheriff of Davidson County. It is contended for this defendant that under the laws of Tennessee all process issued by a Circuit Court must be directed to the sheriff of that particular County, unless the Legislature has expressly authorized the issuance of service to the Sheriffs of other Counties and that the summons in this case does not come within any of the excepted classes. Our law expressly provides that all summons issued by the Courts of any particular County must be directed to the Sheriff

of that County, except in a few cases. The summons in this case shows upon its face that it is an original summons, and under our law a Circuit Court of one County has no authority to
142 direct a summons to the Sheriff of another County.

(2) *Of* the service upon the Chicago Life Insurance Company is sufficient to bring it into Court, it must be by virtue of the power of attorney held by the Insurance Commissioner which this defendant was required to execute under Chapter 160, Section 9, Sub-section 3.

Section 9 of this Act prescribes the conditions that a foreign insurance company must comply with in order to be authorized to do business in this State.

Sub-section 3 of Section 9 provides:

"It shall, by duly executed instrument filed in his office, constitute and appoint the Insurance Commissioner, or his successor, its true and lawful attorney, upon whom all lawful processes in any action or legal proceeding against it may be served, and therein shall agree that any lawful process against it, which may be served upon its said attorney shall be of the said force and validity as if served on the Company, and that the authority thereof shall continue in force, irrevocably, as long as any liability of the Company remains outstanding in this State. Any process issued by any Courts of record in this State, and served upon such Commissioner by the proper officer of the County in which the said Commissioner may have his office, shall be deemed a sufficient process on said Company, and it is hereby made the duty of the Insurance Commissioner, promptly after such service of process by any claimant, to forward by registered mail, an exact copy of such notice to the Company."

It is a well settled rule of law that where special power is given, it must be strictly construed, and unless special power is strictly complied with, the party is not bound. The power of attorney required, under this Act, is a special power arising out of a contract which the State, for the protection of its citizens, requires the Insurance Company to execute and stands upon the same grounds in so far as its proper construction is concerned as any other special power created by private contract. Again, this power is a departure from the doctrine of the common law that a corporation cannot be sued outside of the sovereignty which created it, and being in deroga-
143 tion to common law, it must be strictly construed.

Moreover, this special power relates to a constructive service of process in lieu of a personal service. "It is the universal rule that where constructive service is prescribed by the State in lieu of personal service, the terms of the Statute by which it is authorized must be strictly followed or the service will be invalid and the judgment rendered thereon by default void."

This Act expressly provides that the process "must be served upon the Commissioner by the proper officer of the County in which the Commissioner may have his office." It will be noted that in no place does it authorize the Commissioner to accept service for the insurance company. It not only provides that the process must be

served upon the Commissioner, but also prescribes that the process can be served upon him only by the Sheriff of the County in which he has his office, to-wit, Davidson County. The return upon the summons is in these words:

"By virtue of authority in me vested, I have today acknowledged — of the within summons for the Chicago Life Insurance Company, this 20th day of May, A. D., 1907, at 11:30 A. M. R. E. Folk, Insurance Commissioner."

It will be noted that this Act was not complied with. The process was not served upon the Commissioner by the Sheriff of Davidson County, but the Commissioner acknowledged service of process by virtue of the power of attorney required under this Act.

This question has been before the Courts of other states in a number of cases, all of them holding that where the Statute prescribes that the process must be served upon the Commissioner, no
144 valid service can be had unless the process is actually served, and that where the Insurance Commissioner acknowledges service of process, it is not a compliance with the Act and does not bring the insurance company into Court.

"Where an agency is a particular and not a general agency the constituent is not bound by the act of the agent, except in strict conformity to the power."

Gordon vs. Porterfield, 5 Yer. 79;
Rankin vs. Eakin, 3 Head, 229.

"The agency being special the power is to be strictly construed. This is a settled rule in the construction of powers of attorney and the principal cannot be bound beyond the limit prescribed by him. The special authority must be strictly pursued. Whoever deals with an agent constituted for a special purpose, deals at his peril when the agent passes the precise limits of his power."

Lumpkin vs. Wilson, 5 Heisk., 558;
Bank vs. Anders, 2 Sneed, 540;
Hart vs. Dixon, 5 Lea, 339.

"When the Statute prescribes a particular mode of service, that mode must be followed. Ita lex scripta est. There is no chance to speculate whether some other mode will not answer as well. This has been too often held by the Court to require further citation."

Amy vs. Watertown, 130 U. S., 301.

In dealing with the cases upon this subject the service of process upon foreign corporations is referred to as a constructive or substituted service, and the general rule is that where the service is made under a Statute, the Statute must be strictly complied with to obtain jurisdiction. It is thus stated in Thompson on Corporations, sec. 7505: "Where a particular mode of service of process on corporations is pointed out by Statute, that method must be followed. * * * Statutes of this kind are not regarded as directory, but as mandatory and exclusive. Hence when the Statute prescribes the

method of service, a method not included therein will not be good, although it might have been good at common law.' "

New River Min. Co. vs. Seeley, 120 Fed. Rep. 193.

"Being a service regulated by Statute, the law should have been strictly pursued, and this not having been done but having been wholly disregarded, we are of the opinion that the service and return thereon were ineffectual to bring the defendant into Court; that Court acquired no jurisdiction over it; and that the judgment rendered thereon was, as to this defendant, null and void."

Stanton Bldg. & Loan Ass'n vs. Haden, 92 Va. 201.

145 "The Supreme Court of Virginia has clearly established the proposition that where constructive service of process is allowed in lieu of personal service, the terms of the statute by which it is authorized must be strictly followed, or the service will be invalid, and the service rendered thereon by default void."

120 Fed. Rep. 193.

"The substituted service in actions, purely in personal was a departure from the common law, and the authority for it, if it were allowed at all, must have been strictly followed."

Settlemeir vs. Sullivan, 97 U. S. 444.

"The Superintendent of the Insurance Department had no power to waive an irregularity in the service, or to give any admission of service. If he had this power, he might date back his admission so as to put the defendant in default, or waive the statute of limitations. It could never have been the intention of the Legislature to thus impower him to prejudice the rights of a corporate litigant. If under the statute, the Superintendent of the Insurance Department has the right to waive any defect in the service of process, or any of the requirements of the statute, he has the right to waive them all. There can be no resting place between the two horns of the *delema.* If he has the right to waive a defect arising from the omission of the plaintiff to deliver a copy of the summons to him personally, he has the right to waive the omission of the plaintiff to furnish him with any copy of the summons at all, and may thus, without any notice to the Insurance Company at all, render it liable to a judgment by default against it in ignorance of its rights, or compel it, in order to avoid such judgment by default, to serve a general appearance, which may prejudice its rights to avail itself of the statutes of limitations or otherwise, and waive all irremediable defects in the service or in the summons itself. This opportunity for collusion on the part of the public officer with the plaintiff, a citizen of his own State, who may have had important political influence in securing his appointment, it could never have been the intention of the statute to bestow, nor could it have been the intention of the defendant by its designation to grant. Had the Legislature attempted to give him such power, the statute would be unconstitutional and void, as taking away defendant's property without due process of law. A

private power of attorney such as was given by the defendant in pursuance of the statute would not authorize such an admission or waiver. A power of attorney is always strictly construed, and even general words are limited by the special language which procedes them. Craighead vs. Patterson, 72 N. Y. 279; Rossiter vs. Rossiter, 3 Wend. 491; Danby vs. Coutts, 29 Ch. Div. 500; Hodge vs. Combs, 1 Black 192; Whitley vs. Baker, 1 Root 406."

Affirmed in Farmer vs. National Life Association, 50 Federal Reporter, 831.

"The statute of Virginia, Code 1105, provides that where a foreign corporation doing business in the State fails to comply with the requirements to designate an agent upon whom process may be served, service upon either of the officers, agents or employees of the Company shall be deemed a sufficient service upon the Company, but the statutes of the State nowhere provides for the acquiring of jurisdiction over a foreign corporation by an acceptance of service by any of its agents or employees. Held that to acquire jurisdiction under Section 1105 by service upon an agent or employee, its provisions must be strictly followed and the service made by an officer, and that an acceptance of service by a bookkeeper employed by a corporation who*m* represented himself in the acceptance as having authority to represent the Company, but in fact did not, conferred no jurisdiction on the Federal Court in Virginia to render a judgment against the Company."

New River Mineral Company vs. Seely (Cir. Court of App. Fourth Circuit), 120 Federal Rep. 193.

146 "The learned Judge below has upheld it on the ground that Dumone, being an agent of the corporation upon whom process against it might be legally served, was competent to accept service for the corporation; Citing from Thompson on Corporations, Sec. 7526: 'any one whom service of process may be executed is competent to acknowledge in writing in behalf of the corporation that he has been served'. —and 19 Ency. of Pl. & Pr. 670 to the same effect. * * *

In the cases dealing with this subject, the service of process upon the agent of a foreign corporation is referred to as constructive or substituted service, and the general rule is that where service is made under the statute, the statute must be strictly complied with to obtain jurisdiction. It is thus stated in Thompson on Corporations, Section 7503: 'Where a particular method of service upon corporations is pointed out, by statutes, that method must be followed'." * * *

"Statutes of this kind are not regarded as directory, but as mandatory and exclusive. Hence when the statute prescribes the method of service, a method not included therein will not be good, although it might have been good at common law'.

"In Staunton Perpetual Building & Loan Company vs. Haden, 92 Va. 201, the Court says:—'Being a service regulated by statute, the law should have been strictly pursued, and this not being done, but having been wholly disregarded, we are of the opinion that the summons and the return thereon were ineffectual to bring the defend-

ant, the West Clifton Forge & Investment Company before the Hustings Court of the City of Staunton; that the Court acquired no jurisdiction over it; and that the judgment rendered by the Court was as to this defendant, null and void'.

"The Supreme Court of App. of Virginia, clearly established the propocition that where constructive service of process is allowed in lieu of personal service, the terms of the statute by which it is authorized must be strictly followed, or the service will be invalid, and the judgment rendered thereon by default, be void.

"In the case of Settlemeir vs. Sullivan, 97 U. S. 444, the Court says: 'The substitute service in actions purely in personam was a departure from Common Law, and the authority for it, if it were allowed at all, must have been strictly followed'.

"As the statute of Virginia contained no provision for acquiring jurisdiction over foreign corporations by an acceptance of service by any of its employees or agents, is such authority to accept service to be presumed? We think not; and the fact that Dumont was an agent or employee upon whom service might legally have been made, does not in the absence of a statutory provision authorizing him to accept service raise any presumption of his authority to bind the Company. * * *

"Dumont having testified that he had no authority from the Company to accept service for it, we are of the opinion that he was not an agent who was so far representative of the Company that it would be fair, reasonable and just and apply an authority on his part to bind the Company by an acceptance of the service; and as the statute of Virginia gave him no such authority the service on this corporation has no effect, except in the manner provided by such statute, which would follow that the Court has no jurisdiction.

"The decree of the Court below is reversed and the case remanded to the Circuit Court with instructions to vacate the judgment".

New River Mineral Co. vs. Seeley (Cir. Court Apps. Fourth Cir.) 120 Fed. Rep. 193-202.

147 "The appointment of the State Superintendent of Insurance as the attorney of the non-resident Insurance Company, for the purpose of receiving service of process as required by laws 1901 page 360, Chapter 174, Sec. 6, does not authorize him to accept service or waive personal service of summons."

Bennett vs. Supreme Tent of Maccabees, 82 Pac. Rep. 745.

"Had the Court jurisdiction of the person of the appellant at the time of the rendition of the judgment appealed from? The facts in relation to the service of summons are these: It appears from the affidavits filed in support of the motion to vacate, and inferentially from the proof itself, that two copies of the summons and complaint were forwarded by mail to the Commissioner of this State at his office in Olympia. One of these copies was thereafter returned to the attorneys for the respondent by the Deputy Insurance Commissioner with the following endorsement thereon:—'I hereby certify that on the 10th day of February, A. D. 1905, I received at my office in Olympia

a copy of the complaint and a copy of the summons in the case of Nellie Benntee vs. the Supreme Tent of the Knights of the Maccabees of the World. The said copies are exact duplicates of the foregoing summons and complaint. (Signed) Sam H. Nichols, By J. H. Schively, Deputy Insurance Commissioner.' The respondent sought to acquire jurisdiction over the person of the appellant in this manner, by virtue of Sec. 6, of the Acts of March 18, 1901. This section provides that each association such as the appellant admitted to do business in this State and not having its principal office within the State and not being organized under the laws of the State, 'Shall appoint in writing the Commissioner of Insurance and his successors in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it must be served, and in such writing shall agree that any lawful process against it which is served upon said attorney shall be of the same force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains out-tanding in the State.' The appellant claims that the service of summons in question was void upon the following reasons: (1) Because the alleged service was by mail; (2) Because the statutory agent cannot accept, admit or waive service; (3) Because service cannot be made on the Deputy of the statutory agent; and (4) because there is no competent proof of the appointment of the Commissioner of Insurance as statutory agent in the manner required by the above Act.

"Personal service of summons cannot be made by mail in this State. The statute not only fails to authorize it, but by implication forbids it. Section 4893 Ballinger's Ann. Code expressly provides that certain sections of the Code authorizing the service of notice and other papers by mail do not apply to the service of the summons or other process or of any paper to bring a party in contempt. See Savings Bank of St. Paul vs. Authier, (Minn.), 53 N. W. 812; 18 L. R. A. 498, where the statutes under consideration are identical with our own. Can the statutory agent admit or waive service
148 of summons? The agency created by the act in person and by the commission provided for therein, is a passive agency. To hold that such agent can admit or waive service of summons, where no service has been in fact made, is to add materially to the powers conferred upon him by the statute and by his warrant of attorney. The Insurance Laws of New York are similar to our own on the question under consideration. In the case of Farmer vs. National Life Association, 50 Fed. Rep. 829, the Superintendent of Insurance who was the statutory agent in that State formally admitted service of a summons and complaint which he had received through the mail as in this case. The Court held without an opinion that such service was void. The Syllabus of the case is as follows:—

" 'The appointment of the State Superintendent of Insurance as the attorney of a non-resident insurance Company for the purpose of receiving service of process as required by laws of New York, 1884, page 420, does not authorize him to accept service by mail and such service is void'.

"See also New River Mineral Company vs. Seeley, 120 Fed. Rep. 193.

"Nor in our opinion can the service be made on a deputy Insurance Commissioner. It was so held in the case of Lonkey vs. Keyes, 21 Nev. 312. The process is not served on the Insurance Commissioner by virtue of his office, nor does he deirve his authority to bind the association from his office or from the laws of the State. His entire authority comes from the commission executed by the association and the donee of the power in that instrument is the Insurance Commissioner and his successors in office".

Bennett vs. Supreme Tent of the Maccabees, 82 Pac. Rep. 744.

"It is often provided by statute that a foreign corporation shall appoint some person residing in the County in which its principal place of business is upon; whom process may be served, but such an agent receiving service does not act officially, but under power of attorney, and hence service on his deputy is insufficient, nor has he any power to waive or accept service.

Current Law 1036.

"Washington Laws, 1901, page 306, requiring foreign Insurance Companies to appoint the Commissioner of Insurance as their attorney to receive service, does not authorize the Commissioner when appointed to waive or accept service."

80 Pa. 744.

This identical question was considered by Judge Tyler of the First Circuit of this State in the case of D. H. Willard vs. the Employers' Indemnity Company, and Judge Tyler held that the Commissioner had no authority to acknowledge service of process for an insurance company, but that the process must be actually
149 served upon the Commissioner as required by statute. Judge Tyler's opinion follows:

"Defendant being a foreign corporation lodged with the Insurance Commissioner of this State, the power of attorney required by Chapter 160, Sec. 9, sub-section 3, of the Acts of 1895. This suit was instituted in Washington County as if the defendant was a resident therein, and process issued direct to the sheriff of that County. This process was thereupon forwarded to the Insurance Commissioner of the State, and service of the same was acknowledged pursuant to the power of attorney lodged with him by the defendant company as required by statute. The question arising upon the plea in abatement filed by defendant and the demurrer thereto, is whether the Insurance Commissioner pursuant to the power of attorney lodged with him—assuming that such power of attorney is no broader than required by statute—had the authority to accept service of process. If he had such authority the demurrer, in that particular, is well taken; otherwise, it is not.

"I am of the opinion that the Commissioner had no authority to accept service of the process conferred upon him by the statute, but that to render the same binding upon the Company, service must be

regularly had by an authorized officer of the law, as provided by the statute. Such seems to be the construction placed by the Courts upon similar statutes of the State.

Farmer vs. National Life Ass'n, 50 Fed. Rep. 631;
New River Mining Co. vs. Seeley, 20 Fed. Rep. 193;
Bennett vs. Supreme Tent, Etc., 82 Pac. Rep. 745.

"I do not agree with the position taken by the defendant's attorney, that under the statute in question it is necessary that the process issue from a Court in Davidson County before effective service thereof can be had on the corporation through the Commissioner. * * *

"It results that the demurrer to the plea in abatement is overruled".

150 II.

The court erred in overruling the plea in abatement of the Federal Life Insurance Company.

The action of the lower Courts was erroneous in overruling the plea in abatement and in refusing to grant a new trial upon the matter of this plea in abatement. There is no evidence in the record to sustain such a judgment.

(1) The summons in this case was served upon one G. G. Butler, who was designated as the agent of the Federal Life Insurance Company, or who represented the Federal Life Insurance Co., at the time of the delivery of the policy sued on. This is a proceeding under Sections 4545 and 4546 of Shannon's Code of this State, providing that service of process can be had upon a foreign corporation by service upon the agent who represented the corporation "at the time the transaction out of which this suit arose, took place."

The determination of the issues made under the plea in abatement was submitted to the trial Judge without the intervention of a jury, and there is no controversy about the facts upon which the Court acted. The application upon which this policy was issued was taken by Butler upon the regular printed form used by the Chicago Life Insurance Company, and at the time he took this application Butler was a duly authorized agent of the Chicago Life Insurance Co. Butler was never the agent of the Federal Life Insurance Company, and the Federal Life Insurance Company never solicited or issued any business in this State.

The suit in the present case is over the policy of insurance, and as this policy was not issued by the Federal Life Insurance Company, and as Butler never represented that Company as agent, it necessarily follows that Butler was not the agent of the Federal Life at the time of the transaction out of which this suit arose. It would, therefore, be clear that a service upon Butler would not be binding upon the Federal Life Insurance Company under the terms of this Statute.

151 The lower Court seemed to have acted upon the theory that inasmuch as this policy was reinsured by the Federal

Life of Sept. 22nd, 1906, this reinsurance would in fact relate back to the time when the policy was issued and make the entire transaction one of the Federal Life Insurance Company, and thereby making Butler the agent of the Federal Life Insurance Co. at the time this policy was applied for and issued. Such a contention cannot be sustained. The reinsuring Company merely takes over the business as of the date that the reinsurance is affected and the reinsuring company has no other obligation, except to carry out the contract of insurance from that time. The reinsurance contract would not make the reinsuring company responsible for the acts of the other Company prior to the time that the reinsurance contract was entered into, nor would the fact that the Chicago Life reinsured this policy with the Federal Life constitute the Chicago Life the agent of the Federal Life for any purpose. The legal effect of a reinsurance contract is merely that the reinsuring Company agrees to carry out the policy contract, and the reinsurance does not have the effect of merging the two Companies. After the reinsurance is affected the two corporations are as separate and distinct as they were at the time the contract was entered into.

The principles of law relating to this matter are so elementary that it is not deemed necessary to cite them.

(2) There is no evidence to support the findings of the Court holding that the plea in abatement filed by the Federal Life Insurance Company was not a valid defense.

It is respectfully submitted for the above reasons, and under the above authorities, that the action of the trial Judge was erroneous in overruling the pleas in abatement filed by the Chicago Life Insurance Company and the Federal Life Insurance Company.

152 III.

The lower courts erred in giving judgment for the defendant in error, Mrs. Cherry, for any sum.

The reasons for this assignment of error are already stated in the foregoing assignments, and need not be repeated here.

Wherefore, your petitioners submit that the writ of certiorari should be granted by your Honorable Court and that this cause be reheard and the action of the lower Courts be overruled.

CHICAGO LIFE INSURANCE CO.
By FEDERAL LIFE INSURANCE CO.,
By P. M. & MOREAU P. ESTES, *Solicitors.*

P. M. Estes, being duly sworn makes oath that he ha- read the foregoing petition for certiorari filed on behalf of the Federal Life and Chicago Life Insurance Companies, and that the statements therein made are true to the best of his knowledge and belief.

P. M. ESTES.

Sworn to and subscribed before me, this 17th day of April, 1909.

FRANK N. BORNSCH, JR., [SEAL.]
Notary Public.

153 Court of Civil Appeals.

#1. Chester Law Docket.

BERTHA CHERRY
vs.
CHICAGO LIFE INSURANCE CO.

Biggs & Spragins, Lawyers, Jackson, Tenn.

The petition for certiorari filed in this cause by the defendant in error, to bring the cause to this Court to review the judgment in the Court of Civil Appeals affirming the judgment of the Circuit Court is granted, and the case ordered to be placed upon the docket of this Court for hearing at this term.

Thereupon the Court adjourned until tomorrow morning at 9:30 o'clock.

W. D. BEARD.
M. M. NEIL.
W. K. McALISTER.
B. D. BELL.

M. B. 44, page- 42-43, Apr. 29, 1909.

June 12, 1909.

Court met pursuant to adjournment. Present and presiding the Honorable W. D. Beard, Chief Justice, W. K. McAlister, M. M. Neil, John K. Shields, and B. D. Bell, Associate Justices, when the following proceedings were had, to-wit:—

154 In the Supreme Court of Tennessee, at Jackson, Tennessee.

"CHICAGO LIFE INSURANCE CO. and FEDERAL LIFE INSURANCE CO.
vs.
BERTHA R. CHERRY.

Be it remembered that this cause came on to be heard and was heard, by the Supreme Court of Tennessee upon the petition filed by the plaintiffs in error for certiorari to review the judgment of the Court of Civil Appeals heretofore rendered in this cause, assignment of errors, brief of counsel and the transcript of the record from the Circuit Court of Chester county, Tennessee, when the court is of the opinion that the Circuit Court of Chester county did have jurisdiction of the Chicago Life Insurance Co. and the Federal Life Insurance Company, and that they and each of them were properly before court by due process of law, and that there was no error in the judgment of the Court of Civil Appeals dismissing the writ of error sued out by the said Chicago Life Insurance Co. and the Federal Life Insurance Co. seeking to review and reverse the judgment of the Circuit Court

of Chester county and the said judgment of the Court of Civil Appeals is in all things affirmed. It is therefore ordered, adjudged and decreed that the said writ of certiorari be dismissed and that the defendant in error Bertha R. Cherry, have and recover from the Chicago Life Insurance Company and the Federal Life Insurance Company and Moreau P. Estes, security on bond executed for said writ of error, all the costs incident to said writ of error including the cost of said certiorari proceedings for which execution may issue.

And it further appearing to the court that since the trial of said cause in the Court of Civil Appeals the original papers certified from the Circuit Court of Chester county, and being the policy sued upon in this cause, together with the application for said policy has been mislaid or misplaced and that the said papers were by consent supplied and are now filed in this cause, upon motion of defendant in error it is ordered by the court that said papers, or the original if found may be withdrawn from this record by leaving a true and correct copy of the same, and the clerk of this court will so certify the withdrawal of either the papers so supplied or the originals."

155 *Bill of Cost.*

#1, Chester Law Docket.

BERTHA R. CHERRY
vs.
CHICAGO LIFE INS. CO. and FEDERAL LIFE INS CO.

State Tax Supreme Court	5.00
Jno. W. Buford, Clerk—File Record 75. Ent. on 8 Dockets $2.00. Ent. Sec. of Rec. 25. Packing and send. out Record to both parties 50. Judge 75. Do. v. Surety 25. For Costs 25. Order 25. Motion 25. Order for Ex. 25. Fi. Fa. 1.50. Recording rec. 25. Postage 10. Filing assignment of errors 50. Filing briefs 1.50. Notice to counsel 50. Ent. and end. sup. Court costs on Ex. and Docket 1.00. Ent. and End. Inf. Court costs on Ex. and Docket 1.00. Recording Sheriff's Returns 25. Entries at rule 80. Filing opinion 50. Filing bond 50. Writ of error—Certiorari—Fil. Add. Record—Fil. Pet. to rehear—Fil. ans. —Order Diss.—Procedendo—Sea.—Copy of Decree with pro.—Copy of Opinion with pro. Costs incident to certiorari to Sup. Court $7.50	23.90

Lower Court Costs.

Clerk C. L. Parrish	17.70	
State & County Tax	5.00	
Sheriff Weir	1.50	
Constable	.25	
N. P. Fees	1.00	
Witness fees	14.10	
Total Lower Court Costs, see transcript page —		39.55
Total Costs		**68.45**

I, Jno. W. Buford, Clerk of Supreme Court do certify that the above is a correct and complete Bill of Cost in the above mentioned case, as appears on file in my office.

JNO. W. BUFORD, *Clerk,*
(Sgd.) By J. E. SPRINGBETT, *D. C.*

This 3*th* day of November 1909.

STATE OF TENNESSEE,
Madison County:

I, J. W. Buford, Clerk of the Supreme Court of Tennessee and also Clerk of the Court of Civil Appeals, of the State of Tennessee, do hereby certify that I am the keeper of the records and files of said courts and that the foregoing is a true, perfect and correct copy and transcript of the record and proceedings in the case of Chicago Life Insurance Co., and the Federal Life Insurance Co., plaintiffs in error against Mrs. Bertha Cherry, defendant in error, on file, and as appears of record in my office as Clerk of the Court of Civil Appeals of Tennessee, and also a true, perfect and complete copy and transcript of the record and proceedings on file and of record in said cause in my office as Clerk of the Supreme Court of the State of Tennessee, including a true and correct copy of the bill of costs in said cause.

Witness my hand and seal of the Supreme Court of Tennessee and the seal of the Court of Civil Appeals of Tennessee, this the 3 day of November 1909.

(Sgd.) JNO. W. BUFORD, Clk., *Clerk.*

156 STATE OF TENNESSEE,
Madison County:

I, W. D. Beard, Chief Justice of the Supreme Court of Tennessee, do hereby certify that J. W. Buford, whose genuine signature appears to the above certificate was on the 31st day of December, 1908, and continuously thereafter, and now is, the true and lawful clerk of the Court of Civil Appeals of Tennessee and of the Supreme Court of the State of Tennessee, duly commissioned and qualified. That said Courts are courts of record having a clerk and seal, and that his acts as such clerk of said Courts are entitled to full faith and credit, and that the attestation is in due form of law.

Witness my hand and seal, this the 3 day of November 1909.

[SEAL.] (Sgd.) W. D. BEARD. [SEAL.]
Chief Justice of the Supreme Court of Tennessee.

STATE OF TENNESSEE,
Madison County:

I, J. W. Buford, Clerk of the Supreme Court of the State of Tennessee, (said Court being a Court of Record) do hereby certify that W. D. Beard, whose genuine signature appears above, is the true, lawful and constitutional Chief Justice of the Supreme Court of the State of Tennessee, duly elected, commissioned and qualified as such.

Witness my hand and seal of the Supreme Court of Tennessee, this the 3 day of November 1909.

[SEAL.] (Sgd.) JNO. W. BUFORD, Cl'k,
Supreme Court Clerk.

Bill of Cost.

John W. Buford, Clerk.

8 Certificates	4.00
Transcript 76 pp.	37.60
	$41.60

I, Jno. W. Buford, Clerk of the Supreme Court and Court of Civil Appeals, for the Western Division of Tennessee, do certify that the above bill of cost amounting to Forty One and 60/100 ($41.60) dollars, was paid this date by Messrs. Biggs & Spraggins.

JNO. W. BUFORD, *Clerk,*
By J. E. SPRINGBETT, *D. C.*

This 22 day of December 1909.

157 The Court: Is that your case, gentlemen?
Mr. Loucks: That is our case.

Whereupon the plaintiff rested her case.

Mr. Wilson: I have a motion here that I offer on behalf of the Federal Life Insurance Company, asking the court to instruct the jury, at the close of the plaintiff's case, to find the issues for the defendant, Federal Life Insurance Company, and I present the instruction.

The Court: The same motion on behalf of the other?

Mr. Behan: The same motion and instruction, if the Court please.

The Court: You may proceed, gentlemen.

Mr. Wilson: Exception.

And thereupon, at the close of plaintiff's evidence, the defendants, Federal Life Insurance Company and Chicago Life Insurance Company, by their respective counsel, each then and there moved the court in writing to take the case from the jury and to instruct the jury to find the issues in favor of the defendants, and accompanied said written motions with written instructions to the same effect; which said written motions, and said written instructions are in the words and figures as follows, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 1444.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

(Denied.)

Now comes Federal Life Insurance Company, one of the defendants herein, at the close of the plaintiff's case and moves the court to instruct the jury to find the issues in favor of Federal Life Insurance Company.

(Signed) CHILION P. WILSON,
Attorney for Federal Life Insurance Company.

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 1444.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

(Refused.)

The court instructs the jury to find the Federal Life Insurance Company not guilty.

158 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court.

No. 277,253.

Mrs. BERTHA R. CHERRY
vs.
CHICAGO LIFE LNSRANCE COMPANY, et al.

(Denied.)

Now comes the defendant, Chicago Life Insurance Company, by Duncombe & Behan, its attorneys, and moves the Court to instruct

the jury at the close of plaintiff's case, to find the defendant, Chicago Life Insurance Company, not guilty.

(Signed) DUNCOMBE & BEHAN,
Attorneys for Defendant, Chicago Life Insurance Co.

(Refused.)

The court instructs the jury to find the defendant, Chicago Life Insurance Company, not guilty.

But the Court denied the said motions, and refused to give said instructions; to which action and ruling of the court in denying said motions and refusing to give said instructions, the defendants, Federal Life Insurance Company and the Chicago Life Insurance Company, by their respective counsel, each then and there duly excepted.

And thereupon the defendants, Federal Life Insurance Company and Chicago Life Insurance Company, to maintain the issues in their behalf introduced the following evidence, to-wit:

Mr. Atkinson: I suppose as a matter of policy and out of embarrassment, probably, as general counsel of the Federal Life, before going on the witness stand I had better withdraw as attorney in this case at this time. I do not know as it makes any difference.

The Court: I do not suppose there is any testimony the court could receive under the ruling.

Mr. Atkinson: I understand, but we propose to make our offer.

The Court: You may make the offer but you do not have to go on the stand to make the offer of proof.

Mr. Wilson: Let the record show that Mr. Charles A. Atkinson, as attorney of record—withdraws as attorney of record for the defendant, Federal Life Insurance Company.

CHARLES A. ATKINSON, called as a witness on behalf of the defendant, Federal Life Insurance Company, being first duly sworn, was examined in chief by Mr. Wilson and testified as follows:

Q. Will you state your name?
A. Charles A. Atkinson.
Q. What is your occupation?
A. Attorney.
Q. For whom?
A. General Counsel for the Federal Life Insurance Company.
Q. How long have you been general counsel for the Federal Life Insurance Company?
A. Ever since it was organized, in 1900.
Q. What other position or office do you hold with the Federal Life Insurance Company?
A. Vice president.
Q. Do you remember when the suit was brought in Tennessee by Mrs. Cherry, the plaintiff here, against the Federal Life Insurance Company?
A. Yes, sir.

Q. Will you state who had charge of handling that matter at that time.

Mr. Loucks: If the Court please I object to this line of
159 questioning, it is very apparent that the purpose of these questions is to show matters which have already been adjudicated by the Court of Tennessee.

The Court: Well, it is the proper time to make the objection. What is the purpose of the question please?

Mr. Wilson: I want to show that the major is qualified—Mr. Atkinson is qualified to answer the questions that I propose to offer or make proof of, Your Honor.

The Court: Well, you may make your offer of proof now.

Mr. Wilson: It will be assumed that the witness——

The Court: The witness is qualified.

Mr. Wilson (continuing): —is qualified to answer those questions?

The Court: Yes.

Mr. Wilson: I desire to offer—I desire to offer to prove by this witness that, at the time the suit was brought in Tennessee, in the Circuit Court of Chester County, by Bertha R. Cherry against the Federal Life Insurance Company, that the Federal Life Insurance Company was incorporated under the laws of the State of Illinois and doing business thereunder; that it never had applied for a license to do business in the State of Tennessee, and was not licensed to do business in the State of Tennessee at the time the suit was begun, or at the time the alleged service was had, or at the time any of the proceedings were had in the State of Tennessee. I desire further to show, and I can show by this witness that the person, G. G Butler, I believe it is, upon whom the summons——

Mr. Atkinson: That is the name.

Mr. Wilson (continuing): —was purported to be served—well, whatever it was, whoever it was—was not employed by the Federal Life Insurance Company to transact any business of the Federal Life Insurance Company further than to submit a definite, fixed amount as a proposition to the beneficiaries under that policy as a settlement or compromise of that, and had no authority beyond that at all, other than to report back whether or not they would accept that offer, and, if they did not, to return the document sent him and, if they did, to turn over the draft that he had, fixing the amount, to them, and taking a receipt, and that his duties in that regard had been performed and ended before this suit was brought when he reported that they would not accept the offer of settlement. I desire further to show that after suit was brought, the Federal Life Insurance Company authorized the attorneys to appear for the Federal Life Insurance Company for the sole purpose of questioning the jurisdiction of the court, and with no authority to enter any appearance other than the special appearance for the purpose of questioning the jurisdiction of that *suit* over the Federal Life Insurance Company.

The Court: Is that all?

Mr. Wilson: And I desire to show that the Chicago Life Insurance Company was never at any time for any purpose the agent in Ten-

nessee of the Federal Life Insurance Company, or that Mr. Butler, or whoever is mentioned in the writ there, was not the agent of the Federal Life Insurance Company at any time in reference to the delivery of the policy or any other document other than what I have already stated.

Mr. Atkinson: Just a moment.

The Court: Any objection?

Mr. Wilson: Just a moment.

Mr. Loucks: We object if the Court please.

The Court: Just a moment.

Mr. Wilson: In order to may my offer of proof a little more specific I will add something more to it. Also, I will say, at the time of the beginning of the suit, and at the time of the alleged service, the Federal Life Insurance Company was not doing business in the State of Tennessee and had not applied for, and was not licensed to do business in Tennessee at the time the suit was begun, and
160 at the time the alleged service was had.

Mr. Atkinson: That is part of your offer.

The Court: Yes, that is part of the offer. I will exclude it in its entirety on the objection.

Mr. Wilson: Is there any objection to the form in which I make my offer?

Mr. Loucks: We do not object to the form, we raise no objection on the ground that Counsel has stated what he intends to prove instead of actually asking the questions of the witness.

The Court: Yes.

Mr. Loucks: We make no objection on that ground.

The Court: Your objection goes to the substance of the proof?

Mr. Loucks: To the substance.

The Court: Your objection is that the proof is incompetent, and it is something that is precluded by the adjudication.

Mr. Loucks: And immaterial and irrelevant in this suit.

The Court: Anything else?

Mr. Wilson: Your Honor overrules my objection?

The Court: Yes.

Mr. Atkinson: No, sustains their objection.

The Court: Sustains the objection and excludes the offer.

Mr. Atkinson: Yes.

Mr. Wilson: An exception.

To which ruling of the Court, the defendants, Chicago Life Insurance Company and the Federal Life Insurance Company by their respective Counsel, each then and there duly excepted.

Mr. Behan: I would like to make an offer, if the Court please, on behalf of the Chicago Life Insurance Company, and for that purpose, I will have Mr. Hamblen sworn.

SAMUEL G. HAMBLEN, called as a witness on behalf of the defendant, Chicago Life Insurance Company, was examined in chief by Mr. Behan and testified as follows:

Q. What is your name?

A. Samuel G. Hamblen.

Q. Where do you reside?
A. Austin.
Q. What is your business?
A. Lawyer.
Q. Have you investigated the records in the Insurance Department in the State of Tennessee, for the purpose of ascertaining the status of the Chicago Life Insurance Company in that State?
A. I have.
Q. Prior to the time of the institution of a suit——
The Court: Just a minute.

M. Behan (continuing):

Q. —in Chester County, Tennessee, wherein Bertha R. Cherry was plaintiff and the Chicago Life Insurance Company was defendant.

The Court: What do you desire to prove by this witness?
Mr. Behan: Without any further formalities in the way of questions?
The Court: Yes.

Mr. Behan: What we offer to prove by this witness, if the
161 Court please, is, that at the time of the institution of the suit in Chester County, Tennessee, wherein Bertha R. Cherry was plaintiff, and the Chicago Life Insurance Company was defendant, the Chicago Life Insurance Company was not licensed to do or transact any insurance business in the State of Tennessee, that, at that time, it had not authorized the insurance commissioner of that State, or anyone else, to acknowledge or receive service in its behalf. We further offer to prove that the Chicago Life Insurance Company, at that time was not doing an insurance business in the State of Tennessee. That is our offer.

Mr. Loucks: An objection.
The Court: I will exclude it on the objection of Counsel, in its entirety.
Mr. Behan: Exception.
To which ruling of the Court, the defendant, the Federal Life Insurance Company, and the Chicago Life Insurance Company, by their respective counsel, each then and there duly excepted.
Whereupon the defendants rested their case.
Mr. Wilson: I have another instruction here to offer at the close of the case.
The Court: I am going to make that unnecessary by giving a peremptory instruction for a verdict.
Mr. Atkinson: We would like to have the instruction offered and refused, so that we can get our exceptions, if the Court please.
The Court: I will do that. Prepare a verdict Mr. Clerk. The suit is in debt, or assumpsit?
Mr. Loucks: Debt.
Mr. Wilson: When it comes to making up the record of bill of exceptions, will it be understood that there may be exceptions taken to each of Your Honor's rulings?
The Court: Yes. The whole thing is a question of law, gentlemen. Have you prepared a form of verdict?

Mr. Loucks: Yes, Your Honor. We haven't a form of verdict, but we have a formal instruction.

The Court: Your claim is for debt or how much?

Mr. Loucks: The damages we figure as $425.82.

Mr. Wilson: I think the items ought to be put in here, because they cannot recover in this case for the cost that was incurred by reason of the suit in the Supreme Court, if they are relying on a judgment in the Court of Appeals.

The Court: Let me see your declaration.

Mr. Wilson: No matter what the declaration says, that proposition is true, they might declare on fifteen different judgments, but they cannot recover on but one. They may allege in the declaration the necessary things, as to the Supreme Court, and the Court of Appeals, and a hundred of the other Courts, but it is Your Honor's duty, as we insist, to exclude any costs in any other court except the one they rely on, and that is the Court of Civil Appeals. Now, the action in the Supreme Court was an entirely new action, and they will have to begin a new action in order to recover the costs of that suit.

The Court: What do you say to that, gentlemen?

Mr. Loucks: This was not a new suit in the Supreme Court. In other words it was a writ of certiorari to the Supreme Court, and they merely affirmed the verdict of the Court of Civil Appeals. I should like to read it.

The Court: I have it. Let me have the declaration.

Mr. Wilson: They added the judgment for costs, that is all the Supreme Court did. It was the Court of Civil Appeals that affirmed the verdict. As Your Honor remarked this morning, the action in the Supreme Court is a new proceeding.

162 The Court: A new proceeding, but you may bring one action to recover on both.

Mr. Wilson: You cannot join two actions in debt, Your Honor. Now, the action here is specifically as stated in the affidavit.

The Court: What do you say about that?

Mr. Loucks: Why, I do not think that there is merit in that contention.

The Court: Yes, you cannot join two actions in debt?

Mr. Loucks: Well I think there is in that, but we not suing—in other words the Supreme Court did not render an independent judgment, it merely dismissed the writ, and affirmed the decision of the lower court.

Mr. Atkinson: It did render though an independent judgment for costs.

Mr. Wilson: That is all it did do.

Mr. Loucks: If the Court please, if there is any doubt on that point——

The Court: Yes, there is some doubt.

Mr. Loucks: It only amounts to $28.90, and we do not object to that being taken off.

The Court: How about the $39.55?

Mr. Loucks: The $39.55, that is for lower court costs, that is the

lower court, in the Court of Civil Appeals, and only $28.90 of that is for the Supreme Court, and, there being doubt, we would prefer to leave that out.

The Court: That would make a difference in your calculation.

Mr. Loucks: Yes, sir.

The Court: When you have finished, will you have the Clerk fill in the amount——

Mr. Atkinson: If the Court please, I think, while your Honor is on the bench, pardon me, I have withdrawn as counsel, but of course there will be a motion for a new trial, and a motion in arrest of judgment.

Mr. Wilson: Will Your Honor hear the authorities I have on a motion for a new trial?

The Court: No, I will not hear them.

Mr. Atkinson: The motion in arrest of judgment, too.

The Court: You have made out that.

Mr. Atkinson: I think we would prefer to put these motions both in writing, the motion for the new trial, and the motion in arrest of judgment.

Mr. Wilson: We would like to enter motions in writing.

The Court: You have on triple plate armour, now so far as this court is concerned. In other words, you have preserved your objections in every possible form——

Mr. Atkinson: I know, but——

The Court (continuing): By offers, and so forth.

Mr. Atkinson (continuing): If the court please, we would prefer on behalf of the Federal Life Insurance Company, to file a written motion for a new trial and a motion in arrest of judgment.

The Court: You can do that.

Mr. Atkinson: And, when those are passed on, I presume the amount of the bond and the time for the bill of exception—well, all right. Mr. Wilson suggests that we can file the motion as of today, and let the entry be, overruled, on both of them, that is, they cannot be prepared today, but it will be considered as of today.

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Mr. Loucks: The amount of the judgment is $1,762.04.

The Court: $1,762.04?

Mr. Loucks: And then, the costs are $39.55.

The Court: $39.55, is that a part of the debt?

Mr. Loucks: That is a part of the debt, yes, Your Honor.

The Court: That is $1,801.59.

Mr. Loucks: And the interest damages are $425.82.

The Court: That has been reduced.

Mr. Loucks: But I have not figured the interest on the costs.

The Court: You have not?

Mr. Loucks: No, sir, that is on the principal.

The Court: Damages, $425.82.

Mr. Loucks: Yes.

Mr. Atkinson: If the Court please I think we might as well have these entries made without taking the time.

The Court: I haven't had the verdict returned yet.

Mr. Atkinson: Oh, all right.

Mr. Wilson: I would like to have that record, the transcript filed with the clerk, Your Honor, so that we can have it, and there will be no dispute about it. It is now a part of the records of this case.

The Court: Any objection?

Mr. Loucks: No objection, let counsel take it.

The Court: Let it be filed, then they can take it out on receipt, it is not a court document, but I will make the clerk responsible for it.

Whereupon at the close of all the evidence, the defendants, the Federal Life Insurance Company and the Chicago Life Insurance Company, by their respective counsel, each then and there moved the court in writing to take the case from the jury and to instruct the jury to find the issues in favor of the defendants, and accompanied said written motions with a written instructions to the same effect; which said written motions, and said written instructions are in the words and figures as follows, to wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No. 277,253. Term No. 1444.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

(Refused.)

Now comes Federal Life Insurance Company by its attorney at the close of all of the evidence and moves the court to instruct the jury to find the issues in favor of Federal Life Insurance Company.

(Signed) CHILTON P. WILSON.
Attorney for Federal Life Insurance Co.

164 STATE OF ILLINOIS,
County of Cook:

In the Superior Court of Cook County.

Gen. No. 277,253. Term No. 1444.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE COMPANY et al.

(Denied.)

The court instructs the jury to find the issues in favor of Federal Life Insurance Company, and to find said Federal Life Insurance Company not guilty.

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court.

No. 277,253.

Mrs. BERTHA R. CHERRY
vs.
CHICAGO LIFE INSURANCE COMPANY et al.

(Denied.)

Now comes the defendant, Chicago Life Insurance Company, by Duncombe & Behan, its attorneys, at the close of all evidence, and moves the court to instruct the jury to find the defendant, Chicago Life Insurance Company, not guilty.

(Signed) DUNCOMBE & BEHAN.
Attorneys for Defendant, Chicago Life Insurance Company.

(Refused.)

The court instructs the jury to find the defendant, Chicago Life Insurance Company, not guilty.

But the Court refused to grant said motions and refused to give said instructions; to which ruling and action of the Court in denying said motions and in refusing to give said instructions, the defendants, Federal Life Insurance Company, and Chicago Life Insurance Company, by their respective counsel, each then and there duly excepted.

The Court: Gentlemen of the jury, you are instructed to find the issues for the plaintiff and the amount of the debt, to be $1,801.59, and to assess plaintiff's damages at the sum of $425.82. Mr. Sheriff, hand this to the foreman. Do you desire to have that signed by all twelve jurors?

Mr. Wilson: One is enough.

The Court: Very well, by consent of counsel, no objection is being made to its being signed by one juror instead of all twelve.

Mr. Atkinson: He will sign it as foreman, I presume.

The Court: Yes as foreman. Motion for a new trial made on behalf of each of the defendants is overruled.

Mr. Wilson: Exception.

165 To which ruling of the Court, the defendants, Chicago Life Insurance Company and the Federal Life Insurance Company, by their respective counsel, each then and there duly excepted.

The Court: Exception. Leave to file the motion at any time within the next ten days nunc pro tunc Motion in arrest of judgment overruled, an exception. Leave to file the same nunc pro tunc.

Mr. Wilson: Exception.

The Court: As of this date.

Mr. Atkinson: Exception.

To which ruling of the Court, the Federal Life Insurance Company and the Chicago Life Insurance Company, by their respective counsel, each then and there duly excepted.

The Court: Judgment on the verdict.

Mr. Wilson: Exception.

To which ruling of the Court, the defendants, Chicago Life Insurance Company and the Federal Life Insurance Company by their respective counsel, each then and there duly excepted.

The Court: And exception. An appeal prayed and allowed. Where do you want to go?

Mr. Wilson: The Supreme Court is the only place we can go.

The Court: I will make the bond $2,600, bond in thirty days, and bill of exception in sixty days. Is that satisfactory, gentlemen?

Mr. Atkinson: Yes.

Mr. Wilson: Yes.

Mr. Loucks: Judgment on the sum of the verdict for a specific amount.

The Court: Yes, judgment on the verdict for $2,227.41, is it not?

Mr. Wilson: It is the sum of those two.

Mr. Loucks: $2,227.41, yes.

Mr. Wilson: Exception.

To which ruling of the Court, the defendants, The Chicago Life Insurance Company and the Federal Life Insurance Company, by their respective counsel, each then and there duly excepted.

Which was all of the evidence offered or received, or proceedings had on the trial of the above entitled cause.

And thereupon the court gave to the Jury an instruction, which said instruction is in words and figures as follows:—

(Given.)

You are instructed to find the issues for the plaintiff and the amount of the debt to be $1,801.59 and to assess the plaintiffs' damages at the sum of $425.82.

And to the giving of which instruction the defendants, Federal Life Insurance Company and Chicago Life Insurance Company, then and there by their respective counsel duly excepted.

[Endorsed:] 277,253. Cherry vs. C. L. Ins. Co. Given Inst.

166 And thereupon the Jury rendered a verdict, which verdict is in words and figures as follows:

We the Jury find the issues for the plaintiff and we find the amount of the debt to be $1,801.59 *Dollars* and we the Jury assess the plaintiff's damages as the sum of $425.82 *Dollars*.

E. W. GEYLE, *Foreman*.

277,253.
Cherry.
C. L. Ins. Co.
Verdict.

Whereupon the defendants by their respective counsel then and there moved the court to set aside the verdict so rendered and grant a new trial of this cause, and filed the following reasons in writing for their said motions, to-wit:

167 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Herm No., 1444.

BERTHA R. CHERRY, Plaintiff,
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Defendants.

Motion for New Trial on Behalf of Defendant Federal Life Insurance Company.

Now comes the said defendant, Federal Life Insurance Company, by Chilton P. Wilson, its attorney, and moves the court to set aside the verdict and to grant a new trial in this cause and for grounds for said motion shows to the court the following:

1. The court erred in overruling the motion of this defendant made prior to the trial to require plaintiff to file with her declaration a copy of the instrument sued on in this action.

2. The court erred in overruling the motion of this defendant made at the beginning of the trial of this cause to require plaintiff to file a copy of the instrument sued on and erred in not continuing the cause until the next term of court.

168 3. The court erred in overruling the demurrer of this defendant to plaintiff's amended replication to *to* the second plea of this defendant.

4. The court erred in overruling each of the objections of this defendant to the admission of any evidence on behalf of plaintiff for the reason that the declaration of plaintiff in this case does not state facts sufficient to constitute a cause of action in favor of plaintiff and against this defendant.

5. The court erred in overruling each of the objections of this defendant to the introduction in evidence of the records of judgments in the Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee, which record is Plaintiff's Exhibit 1.

6. The court erred in refusing to instruct the jury at the close of plaintiff's evidence to find the issues for this defendant as requested by this defendant.

7. The court erred in sustaining the objections of plaintiff to each of the offers of evidence on behalf of this defendant.

8. The court erred in admitting on the trial Plaintiff's Exhibit 1.

9. The court erred in admitting on the trial of this case Plaintiff's Exhibit 1 because of the variance between said exhibit and the declaration of plaintiff herein and because of the variance between Plaintiff's Exhibit 1 and the copy of the instrument sued on as filed with plaintiff's declaration.

10. The court erred in refusing to instruct the jury at the close of all the evidence to find the issues for this defendant.

169 11. The court erred in peremptorily instructing the jury to find the issues in favor of said plaintiff and against this defendant.

12. The verdict is contrary to the law and the evidence in the case.

13. The verdict is against the weight of the evidence.

14. For errors of law occurring during the trial of this cause and to which this defendant at the time duly excepted.

15. Because the verdict and judgment in this case are excessive.

16. Because the Circuit Court of Chester county, Tennessee, did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

17. Because the Court of Civil Appeals of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

18. Because the Supreme Court of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

19. Each of said judgments in said Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee and the judgment herein rendered was rendered without due process of law and in violation of the Constitution of the State of Illinois and of the United States.

20. Because this defendant at the time said action was brought in the Circuit Court of Tennessee and at the time of the al-

170 leged service upon it was not doing or transacting business in the State of Tennessee and had no agent within the State of Tennessee upon whom service could be had.

21. Because each of said judgments of said Tennessee courts and the judgment in this court deprived this defendant of its rights and of its property without due process of law.

22. Because the court erred in refusing to allow this defendant to prove additional facts showing that neither of said Tennessee courts had jurisdiction to render a judgment against this defendant.

23. Because the court erred in refusing to allow this defendant to prove facts showing that at the time said suit was brought in the Circuit Court of Chester county, Tennessee, and at the time of the alleged service of summons upon this defendant it was not doing or transacting business in the State of Tennessee and did not have an agent in Tennessee who was authorized to represent this defendant and upon whom service could be had and the statute of the State of Tennessee under which said service was had was unconstitutional and contrary to the laws of the United States.

24. Because the court erred in holding that the judgment of the Court of Civil Appeals of the State of Tennessee was res adjudicata.

CHILTON P. WILSON,
Attorney for Defendant Federal Life Insurance Company.

171 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., —.

BERTHA R. CHERRY, Plaintiff,
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Defendants.

Motion for New Trial on Behalf of Defendant Chicago Life Insurance Company as Follows.

Now comes the said defendant, Chicago Life Insurance Company, by Duncombe & Behan, its attorneys, and moves the court to set aside the verdict and to grant a new trial in this cause and for grounds for said motion shows to the court:

1. The court erred in overruling the motion of this defendant to require plaintiff to file with her declaration a copy of the judgments sued on in this action.

2. The court erred in overruling the motion of this defendant made at the beginning of the trial of this cause to require plaintiff to file a copy or exemplification of the judgments sued for and on a continuance.

3. The court erred in overruling the demurrer of this defendant to plaintiff's declaration.

4. The court erred in overruling each of the objections of this defendant to the admission of any evidence on behalf of plaintiff for the reason that the declaration of plaintiff in this case does not state facts sufficient to constitute a cause of action in favor of plaintiff and against this defendant.

5. The court erred in overruling each of the objections of this defendant to the introduction in evidence of the exemplification of the records of judgments in the Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee, which exemplification is Plaintiff's Exhibit 1.

172 6. The court erred in refusing to instruct the jury at the close of plaintiff's evidence to find the issues for this defendant as requested by this defendant.

7. The court erred in sustaining the objections of plaintiff to each of the offers of evidence on behalf of this defendant.

8. The court erred in admitting on the trial improper evidence on behalf of plaintiff, to wit, Plaintiff's Exhibit 1.

9. The court erred in admitting on the trial of this case Plain-

tiff's Exhibit 1 because of the variance between said exhibit and the declaration of plaintiff herein.

10. The court erred in refusing to instruct the jury at the close of all the evidence to find the issues for this defendant as requested by this defendant and to which ruling of the court this defendant duly excepted.

11. The court erred in refusing to give the second instruction requested by this defendant and to which ruling of the court this defendant duly excepted.

12. The court erred in peremptorily instructing the jury to find the issues in favor of said plaintiff and against this defendant and to which ruling of the court this defendant duly excepted.

13. The verdict is contrary to the law and the evidence in the case.

14. The verdict is against the weight of the evidence.

173 15. For errors of law occurring during the trial of this cause and to which this defendant at the time duly excepted.

16. Because the verdict and judgment in this case are excessive.

17. Because the Circuit Court of Chester county, Tennessee, did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

18. Because the Court of Civil Appeals of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

19. Because the Supreme Court of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

20. Because each of said judgments in said Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee was rendered without due process of law having been served upon this defendant.

21. Because this defendant at the time said action was brought in the Circuit Court of Tennessee and at the time of the alleged service upon it was not doing or transacting business in the State of Tennessee.

22. Because each of said judgments of said Tennessee courts deprived this defendant of property without due process of law.

23. Because the court erred in refusing to allow this defendant to prove facts showing that neither of said Tennessee courts had jurisdiction to render a judgment against this defendant.

24. Because the court erred in refusing to allow this defendant to prove facts showing that at the time said suit was brought in the Circuit Court of Chester county, Tennessee, and at the time of the alleged service of summons upon this defendant it was not doing or transacting business in the State of Tennessee.

25. Because the court erred in holding that the judgment of the Court of Civil Appeals of the State of Tennessee on the plea of abatement of this defendant raising the question of its jurisdiction was res adjudicata.

CHICAGO LIFE INSURANCE COMPANY,
Defendant,

By DUNCOMBE & BEHAN, *Its Attorneys.*

174 But the court denied the motions of the defendants.

To which rulings and decisions of the court the defendants, Federal Life Insurance Company and Chicago Life Insurance Company by their respective counsel then and there duly excepted.

And thereupon the defendants by their counsel then and there moved the court in arrest of judgment, and filed the following reasons in writing for their said motions, to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., 1444.

BERTHA R. CHERRY, Plaintiff,
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Defendants.

Motion in Arrest of Judgment on Behalf of Defendant Federal Life Insurance Company as Follows.

Now comes the defendant, Federal Life Insurance Company, by Chilton P. Wilson, its attorney, and moves the court in arrest of judgment in this cause and for grounds for such motion this defendant shows to the court the following:

1. The court erred in overruling the motion of this defendant made at the beginning of the trial of this cause to require plaintiff to file a copy of the instrument sued on and for a continuance.

2. The court erred in overruling the motion of this defendant to require said plaintiff to file with her declaration a copy of the instrument sued on in this action.

175 3. Because the declaration of plaintiff does not state facts sufficient to constitute a cause of action in favor of plaintiff and against this defendant.

4. Because the declaration of plaintiff herein does not support the verdict.

5. Because the declaration of plaintiff herein does not sustain a judgment in favor of plaintiff.

6. Because the verdict in this case should have been for this defendant and against plaintiff.

7. Because the Circuit Court of Chester county, Tennessee, did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

8. Because the Court of Civil Appeals of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

9. Because the Supreme Court of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

10. Because each of said judgments in said Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee was rendered without due process of law and in violation of the Constitution of the State of Illinois and of the United States.

11. Because this defendant at the time said action was brought in the Circuit Court of Tennessee and at the time of the alleged service upon it was not doing or transacting business in the State of Tennessee and had no agent within the State of Tennessee upon whom service could be had.

176 12. Because each of said judgments of said Tennessee courts deprived this defendant of its rights and of its property without due process of law.

13. Because the court erred in refusing to allow this defendant to prove additional facts showing that neither of said Tennessee courts had jurisdiction to render a judgment against this defendant.

14. Because the court erred in refusing to allow this defendant to prove facts showing that at the time said suit was brought in the Circuit Court of Chester county, Tennessee, and at the time of the alleged service of summons upon this defendant it was not doing or transacting business in the State of Tennessee and did not have an agent in Tennessee who was authorized to represent this defendant and upon whom service could be had.

15. Because the court erred in holding that the judgment of the Court of Civil Appeals of the State of Tennessee was res adjudicata.

CHILTON P. WILSON,
Attorney for Defendant
Federal Life Insurance Company.

177 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253. Term No., —.

BERTHA R. CHERRY, Plaintiff,
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Defendants.

Motion in arrest of judgment on behalf of defendant, Chicago Life Insurance Company, as follows:

Now comes the defendant, Chicago Life Insurance Company, by Duncombe & Behan, its attorneys, and moves the court in arrest of judgment in this cause and for grounds for such motion this defendant shows to the court the following:

1. The court erred in overruling the motion of this defendant made at the beginning of the trial of this cause to require plaintiff to file a copy or exemplification of the judgments sued on and for a continuance.

178 2. The court erred in overruling the motions of this defendant to require said plaintiff to file with her declaration a copy of the judgments sued on in this action.

3. Because the declaration of plaintiff does not state facts sufficient to constitute a cause of action in favor of plaintiff and against the defendant.

4. Because the declaration of plaintiff herein does not support the verdict.

5. Because the declaration of plaintiff herein does not sustain a judgment in favor of plaintiff.

6. Because the verdict in this case should have been for this defendant and against the plaintiff.

7. Because the Circuit Court of Chester county, Tennessee, did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

8. Because the Court of Civil Appeals of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

9. Because the Supreme Court of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

10. Because each of said judgments in said Circuit Court of Civil Appeals and the Supreme Court of the State of Tennessee was rendered without due process of law, having been served upon this defendant.

11. Because this defendant at the time said action was brought in the Circuit Court of Tennessee and at the time of the
179 alleged service upon it was not doing or transacting business in the State of Tennessee.

12. Because each of said judgments of said Tennessee courts deprived this defendant of property without due process of law.

13. Because the court erred in refusing to allow this defendant to prove facts showing that neither of said Tennessee courts had jurisdiction to render a judgment against this defendant.

14. Because the court erred in refusing to allow this defendant to prove facts showing that at the time said suit was brought in the Circuit Court of Chester county, Tennessee, and at the time of the alleged service of summons upon this defendant it was not doing or transacting business in the State of Tennessee.

15. Because the court erred in holding that the judgment of the Court of Civil Appeals of the State of Tennessee on the plea of abatement of this defendant raising the question of its jurisdiction was res adjudicata.

CHICAGO LIFE INSURANCE COMPANY,
Defendant,
By DUNCOMBE & BEHAN, *Its Attorneys.*

180 But the court denied the motions and gave judgment on the verdict against the defendants; to which rulings and decisions of the court in denying such motions and in rendering

such judgment, the defendants by their respective counsel then and there duly excepted.

And forasmuch as the matters above set forth do not fully appear of record, the defendants tender this, their bill of exceptions, and pray that the same may be signed and sealed by the judge of this court pursuant to the statute in such case made; which is done accordingly this 22nd day of December, A. D. 1913.

CLARENCE N. GOODWIN, *Judge.*

O. K.
DUNCOMBE & BEHAN,
Att'ys for Ch'go Life Ins. Co.
CHILTON P. WILSON,
Att'y for Federal Life Ins. Co.
ATWOOD, PEASE & LOUCKS,
Att'ys for Bertha Cherry.

181 And afterwards to-wit, on the 23d day of December, A. D. 1913, a certain stipulation was filed in the office of the Clerk of said Court in words and figures following to-wit:

STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Ten. No. 277,253.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE CO. et al.

It is hereby stipulated and agreed between the attorneys for the plaintiff and the attorneys for the defendants that the original bill of exceptions signed and approved in the above cause may be incorporated in the record and be used and become a part of the record by the clerk of the Superior Court in lieu of a copy thereof or transcript thereof for the purpose of perfecting the record for appeal to the Supreme Court of Illinois in the above entitled case.

ATWOOD, PEASE & LOUCKS,
Attorneys for Plaintiff.
CHILTON P. WILSON,
Attorney for Fed. Life Ins. Co.
DUNCOMBE & BEHAN,
Attorney- for Chicago Life Ins. Co.

And afterwards to-wit, on the 23rd day of December, A. D. 1913, a certain notice and Præcipe *was* filed in the office of the Clerk of said Court, in words and figures following to-wit:

182 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE CO. et al.

To Atwood, Pease & Loucks, attorneys for plaintiff:

You are hereby notified that on the 29th day of December, A. D. 1913, at 10 o'clock in the forenoon, we shall file a præcipe for record in said cause with the clerk of the Superior Court of Cook County, directing him to prepare a record sufficient to fairly present the errors which shall be assigned by the defendants in the prosecution of a review of the judgment in said cause, and requesting said clerk to certify the same to the Supreme Court of Illinois, at which time and place you may appear if you see fit, etc.

CHILTON P. WILSON AND
DUNCOMBE & BEHAN,
Att'ys for Defendants, Federal Life Ins. Co. and Chicago Life Ins. Co.

We agree that the five day notice to be given under the statute is hereby waived.

ATWOOD, PEASE & LOUCKS.

Gen. No. 277,253. Term No. 1444. Superior Court of Cook County. Bertha R. Cherry vs. Federal Life Insurance Co. Notice. Filed Dec. 23, 4-18 P. M. 1913. Richard J. McGrath, Clerk, Per R Chilton P. Wilson, Attorney for defendants, 1232 Marquette Bldg. Rand. 3041.

183 STATE OF ILLINOIS,
County of Cook, ss:

In the Superior Court of Cook County.

Gen. No., 277,253.

BERTHA R. CHERRY
vs.
FEDERAL LIFE INSURANCE CO. et al.

Please prepare an authenticated transcript of the complete record in the above entitled cause except the notices given from time to time

and filed in said case, and certify the same to the Supreme Court of Illinois.

CHILTON P. WILSON &
DUNCOMBE & BEHAN,
Attorneys for Federal Life Ins. Co. and Chicago Life Ins. Co.

Gen. No. 277,253. Term No. 1444. Superior Court of Cook County. Bertha R. Cherry vs. Federal Life Insurance Co. et al. Præcipe for record. Filed Dec. 23, 4-18 P. M. Richard J. McGrath, Clerk Per R. Chilton P. Wilson, Attorney for defendants, 1232 Marquette Bldg. Rand. 3041.

184 STATE OF ILLINOIS,
County of Cook, ss:

I, Richard J. McGrath, Clerk of the Superior Court of Cook County, in and for the State of Illinois, and the keeper of the records, files and seals thereof, do hereby certify the above and foregoing to be a true, perfect and complete transcript of the Record as per præcipe on file herein, except the Bill of Exceptions the original — which is by stipulation of the parties incorporated herein and made a part hereof. The Certificate of Publication, in this cause filed in my office on March 1st, 1910 has been lost or mislaid and is not incorporated herein, in a certain cause lately pending in said Court on the Law side thereof, wherein Bertha R. Cherry was plaintiff and Chicago Life Insurance Company et al. were defendants.

In witness whereof, I have hereunto set my hand, and affixed the seal of said Court, at Chicago, this 8th day of January, A. D. 1914.

RICHARD J. McGRATH, *Clerk.*

185 *Assignment of Errors by Appellant Chicago Life Insurance Company.*

And now comes the Chicago Life Insurance Company by Duncombe & Behan, its attorneys, and says that in the record and proceedings of the Superior Court of Cook county, aforesaid, there is manifest error in this, to wit:

1. The court erred in overruling the motion of this appellant made prior to the trial to require appellee to file with her declaration a copy of the instrument sued on in this action.

2. The court erred in overruling the motion of this appellant made at the beginning of the trial of this cause to require appellee to file a copy of the instrument sued on and erred in not continuing the cause until the next term of court.

3. The court erred in overruling the demurrer of this appellant to appellee's amended replication to the second plea of this appellant.

4. The court erred in overruling each of the objections of this appellant to the admission of any evidence on behalf of appellee for the reason that the declaration of appellee in this case does not state

facts sufficient to constitute a cause of action in favor of appellee and against this appellant.

5. The court erred in overruling each of the objections of this appellant to the introduction in evidence of the records of judgments in the Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee, which record is Appellee's Exhibit 1.

6. The court erred in refusing to instruct the jury at the close of appellee's evidence to find the issues for this appellant as requested by this appellant.

7. The court erred in sustaining the objections of appellee to each of the offers of evidence on behalf of this appellant.

8. The court erred in admitting on the trial Appellee's Exhibit 1.

9. The court erred in admitting on the trial of this case Appellee's Exhibit 1 because of the variance between said exhibit and the declaration of appellee herein and because of the variance between Appellee's Exhibit 1 and the copy of the instrument sued on as filed with appellee's declaration.

10. The court erred in refusing to instruct the jury at the close of all the evidence to find the issues for this appellant.

11. The court erred in peremptorily instructing the jury to find the issues in favor of said appellee and against this appellant.

12. The verdict is contrary to the law and the evidence in the case.

186 13. The verdict is against the weight of the evidence.

14. Because the verdict and judgment in this case are excessive.

15. Because the Circuit Court of Chester county, Tennessee, did not have jurisdiction of this appellant and its judgment was and is a nullity and void.

16. Because the Court of Civil Appeals of the State of Tennessee did not have jurisdiction of this appellant and its judgment was and is a nullity and void.

17. Because the Supreme Court of the State of Tennessee did not have jurisdiction of this appellant and its judgment was and is a nullity and void.

18. Each of said judgments in said Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee and the judgment rendered in the Superior Court was rendered without due process of law and in violation of the Constitutions of the State of Illinois and of the United States.

19. Because this appellant at the time said action was brought in the Circuit Court of Tennessee and at the time of the alleged service upon it was not doing or transacting business in the State of Tennessee and had no agent within the State of Tennessee upon whom service could be had.

20. Because each of said judgments of said Tennessee courts and the judgment in the Superior Court of Cook county, Illinois, deprived this appellant of its rights and of its property without due process of law.

187 21. Because the court erred in refusing to allow this appellant to prove additional facts showing that neither of said

Tennessee courts had jurisdiction to render a judgment against this appellant.

22. Because the court erred in refusing to allow this appellant to prove facts showing that at the time said suit was brought in the Circuit Court of Chester county, Tennessee, and at the time of the alleged service of summons upon this appellant it was not doing or transacting business in the State of Tennessee and not did not have an agent in Tennessee who was authorized to represent this appellant and upon whom service could be made and the statute of the State of Tennessee under which said service was had was unconstitutional and contrary to the laws of the United States.

23. Because the court erred in holding that the judgment of the Court of Civil Appeals of the State of Tennessee was res adjudicata.

24. Because the court erred in overruling appellant's motion for a new trial and this appellant's motion in arrest of judgment.

Wherefore, and for divers other errors on the face of the record and proceedings aforesaid, appellant, Chicago Life Insurance Company, prays that the judgment of the Superior Court may be reversed and remanded with instructions to said Superior Court to find the issues in favor of said Chicago Life Insurance Company and render judgment in its favor and against appellee.

CHICAGO LIFE INSURANCE COMPANY,
By DUNCOMBE & BEHAN, *Its Attorneys.*

188 Assignment of errors by appellant Federal Life Insurance Company, as follows:

And now comes the Federal Life Insurance Company by Charles A. Atkinson and Chilton P. Wilson, its attorneys, and says that in the record and proceedings of the Superior Court of Cook county, aforesaid, there is manifest error in this, to wit:

1. The court erred in overruling the motion of this appellant made prior to the trial to require appellee to file with her declaration a copy of the instrument sued on in this action.

2. The court erred in overruling the motion of this appellant made at the beginning of the trial of this cause to require appellee to file a copy of the instrument sued on and erred in not continuing the cause until the next term of court.

3. The court erred in overruling the demurrer of this appellant to appellee's amended replication to the second plea of this appellant.

4. The court erred in overruling each of the objections of this appellant to the admission of any evidence on behalf of appellee for the reason that the declaration of appellee in this case does not state facts sufficient to constitute a cause of action in favor of appellee and against this appellant.

5. The court erred in overruling each of the objections of this appellant to the introduction in evidence of the records of judgments in the Circuit Court, Court of Civil Appeals and the
189 Supreme Court of the State of Tennessee, which record is Appellee's Exhibit 1.

6. The court erred in refusing to instruct the jury at the close

of appellee's evidence to find the issues for this appellant as requested by this appellant.

7. The court erred in sustaining the objections of appellee to each of the offers of evidence on behalf of this appellant.

8. The court erred in admitting on the trial Appellee's Exhibit 1.

9. The court erred in admitting on the trial of this case Appellee's Exhibit 1 because of the variance between said exhibit and the declaration of appellee herein and because of the variance between Appellee's Exhibit 1 and the copy of the instrument sued on as filed with appellee's declaration.

10. The court erred in refusing to instruct the jury at the close of all the evidence to find the issues for this appellant.

11. The court erred in peremptorily instructing the jury to find the issues in favor of said appellee and against this appellant.

12. The verdict is contrary to the law and the evidence in the case.

13. The verdict is against the weight of the evidence.

14. Because the verdict and judgment in this case are excessive.

190 15. Because the Circuit Court of Chester county, Tennessee, did not have jurisdiction of this appellant and its judgment was and is a nullity, and void.

16. Because the Court of Civil Appeals of the State of Tennessee did not have jurisdiction of this appellant and its judgment was and is a nullity and void.

17. Because the Supreme Court of the State of Tennessee did not have jurisdiction of this appellant and its judgment was and is a nullity and void.

18. Each of said judgments in said Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee and the judgment rendered in the Superior Court was rendered without due process of law and in violation of the constitution- of the State of Illinois and of the United States.

19. Because this appellant at the time said action was brought in the Circuit Court of Tennessee at the time of the alleged service upon it was not doing or transacting business in the State of Tennessee and had no agent within the State of Tennessee upon whom service could be had.

20. Because each of said judgments of said Tennessee courts and the judgment in the Superior Court of Cook county, Illinois, deprived this appellant of its rights and of its property without due process of law.

21. Because the court erred in refusing to allow this appellant to prove additional facts showing that neither of said Tennessee courts had jurisdiction to render a judgment against this appellant.

191 22. Because the court erred in refusing to allow this appellant to prove facts showing that at the time said suit was brought in the Circuit Court of Chester county, Tennessee, and at the time of the alleged service of summons upon this appellant it was not doing or transacting business in the State of Tennessee and did not have an agent in Tennessee who was authorized to represent this

appellant and upon whom service could be made and the statute of the State of Tennessee under which said service was had was unconstitutional and contrary to the laws of the United States.

23. Because the court erred in holding that the judgment of the Court of Civil Appeals of the State of Tennessee was res adjudicata.

24. Because the court erred in overruling appellant's motion for a new trial and this appellant's motion in arrest of judgment.

Wherefore, and for divers other errors on the face of the record and proceedings aforesaid, appellant, Federal Life Insurance Company, prays that the judgment of the Superior Court may be reversed and remanded with instructions to said Superior Court to find the issues in favor of said Federal Life Insurance Company and render judgment in its favor and against appellee.

FEDERAL LIFE INSURANCE COMPANY,
By CHARLES A. ATKINSON,
CHILTON P. WILSON,
Its Attorneys.

192 In the Appellate Court, First District, Illinois.

No. 20509.

Mrs. BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE Co. et al., Appellants.

Appeal from Superior.

Error to —.

I, James S. McInerney, clerk of the Appellate Court, within and for the First District of Illinois, and keeper of the records, files and seal thereof, do hereby certify that the Transcript of Record hereto attached and marked A is the original transcript of record filed in said Appellate Court, on the 8 day of May, A. D. 1914, by said appellants.

In testimony whereof, I have hereunto set my hand and seal of said Court at Chicago, Illinois, this 25 day of March, A. D. 1915.

[SEAL.] JAMES S. McINERNEY,
Clerk of the Appellate Court, First District, Illinois.

193 At a Term of the Appellate Court, Begun and Held at Chicago, on Tuesday, the Third Day of March, in the Year of Our Lord One Thousand Nine Hundred and Fourteen, Within and For the First District of the State of Illinois:

Present: Hon. Frank Baker, Presiding Justice.
" " Edward O. Brown, Justice.
" " William H. McSurely, Justice.
Alfred R. Porter, Clerk.
Michael Zimmer, Sheriff.

Court met pursuant to adjournment.
Court opened by proclamation.

And afterwards, on the 11th day of May, A. D. 1914, the following proceedings were had and entered of record in said cause, to-wit:

194

20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE COMPANY, a Corporation, et al., Appellants.

Appeal Cook Superior.

On motion of the appellants it is ordered by the Court that said cause be taken under advisement on abstracts and briefs filed herein by said appellants and placed on the oral argument calendar of this Court to be argued orally on a date in future to be fixed by the Court.

And afterwards, on the 18th day of May, A. D. 1914, the following proceedings were had and entered of record in said cause, to-wit:

195

20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE COMPANY, a Corporation, et al., Appellants.

Appeal Cook Superior.

This day came appellee, by her counsel, and moved the Court for leave to file briefs in said cause instanter, as per affidavit filed herein; and the court being fully advised in the premises doth order that said motion be and the same is hereby allowed.

And afterwards on the Twenty-First day of December, A. D. 1914, it being one of the days of the said October Term, A. D. 1914, of said Court, there were present:

Hon. Edward O. Brown, Presiding Justice.
" William H. McSurely, "
" Frank Baker, "
James S. McInerney, Clerk.
John E. Treager, Sheriff.

Whereupon the following proceedings were had in said cause, to-wit:

196 No. 20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Appellants.

Appeal from Cook Superior.

On this day came again the said parties, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious, or defective; and that in the record there is no error: Therefore, it is considered by the Court that the judgment aforesaid, be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error. And it is further considered by the Court that the said appellee recover of and from the said appellant her costs, by her in this behalf expended, to be taxed, and that she have execution therefor.

And afterwards, on the 28th day of December, A. D. 1914, the following proceedings were had and entered of record in said cause, to-wit:

197 In the Matter of THE PUBLICATION OF THE WRITTEN DECISIONS OF THIS COURT.

It is hereby ordered that in cases the numbers and titles of which are given below, the written decisions of this Court filed on the 21st day of December, A. D. 1914, shall be published in full in the Appellate Court Reports, and that those decisions so filed which are not designated below shall be published by including an adequate abstract of such written decisions.

20509—Cherry v. Chicago Life Ins. Co. et al. *et al.*

And afterwards, on the 4th day of January, A. D. 1915, the following proceedings were had and entered of record in said cause, to-wit:

198

20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Appellants.

Appeal Cook Superior.

The Court having considered the petition of the appellants praying for a rehearing in said cause, and being now fully advised in the premises doth order that the prayer of said petition be and the same is hereby denied.

And afterwards, on the 11th day of January, A. D. 1915, the following proceedings were had and entered of record in said cause, to-wit:

199

20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE CO. et al., Appellants.

Appeal Cook Superior.

The Court having considered the petition of the Chicago Life Insurance Company and the Federal Life Insurance Company for a certificate of importance and an appeal to the Supreme Court of Illinois in said cause; and being now fully advised in the premises doth order that the prayer of said petition be and the same is hereby denied.

And afterwards, on the 18th day of January, A. D. 1915, the following proceedings were had and entered of record in said cause, to-wit:

200

20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Appellants.

Appeal from Cook Superior.

Error to —.

The Court having considered the motion of the appellants that the issuance of the mandate herein be stayed until the time for the filing of a petition in the Supreme Court of Illinois for a writ of

certiorari to review the judgment of this Court in said cause shall have expired without any such petition having been filed, and if such petition for said writ shall have been filed within the proper time, then until said writ of certiorari shall have been granted or refused; and the Court, being fully advised in the premises, doth grant said motion and doth order that the issuance of the mandate in said cause be and the same is hereby stayed accordingly.

And afterwards, on the 8th day of May, A. D. 1915, a certain order from the Supreme Court of Illinois was filed in the office of the Clerk of said appellate court, which said order is in the words and figures following, to-wit:—

201 UNITED STATES OF AMERICA,
State of Illinois, ss:

At a Term of the Supreme Court, Begun and Held at Springfield on Tuesday, the sixth day of April, in the year of our Lord one thousand nine hundred and fifteen, within and for the State of Illinois.

Present:

The Honorable James H. Cartwright, Chief Justice.
Honorable William M. Farmer, Justice.
Honorable Frank K. Dunn, Justice.
Honorable Charles C. Craig, Justice.
Honorable Orrin N. Carter, Justice.
Honorable George A. Cooke, Justice.
Honorable Albert Watson, Justice.
Patrick J. Lucey, Attorney General.
Warren C. Murray, Marshal.

Attest:
CHARLES W. VAIL, *Clerk.*

Be it remembered, that to-wit: on the 21st day of April, A. D. 1915, the same being one of the days of the said April Term of said Supreme Court, certain proceedings were had in said Court and entered of record in the words and figures following, to-wit:

No. 10078.

April 21st, A. D. 1915.

CHICAGO LIFE INSURANCE COMPANY, a Corporation, and FEDERAL LIFE INSURANCE COMPANY, a Corporation, Petitioner,
vs.
BERTHA R. CHERRY, Respondent.

Certiorari to First District.

And now on this day the Court having duly considered the petion for a Writ of Certiorari herein as well as the record, abstract, brief and argument filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a writ of certiorari herein.

And it is further considered by the Court that the said Re-
202 spondent recover of and from the said Petitioner costs by her in this behalf expended, to be taxed, and that she have execution therefor.

I, Charles W. Vail, Clerk of the Supreme Court of the State of Illinois, and keeper of records, files and seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In testimony whereof, I have set my hand and affixed the seal of the said Supreme Court at Springfield, in said State, this 7th day of May, in the year of our Lord one thousand nine hundred and fifteen.

[SEAL.]

CHAS. W. VAIL,
Clerk of the Supreme Court.

And afterwards on the Fourteenth day of May A. D. 1915, the following proceedings were had and entered of record in said cause to-wit:—

203

20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Appellants.

Appeal Cook Superior.

The Court having considered the motion of the appellants to stay the issuance of the mandate from this Court in said cause pending the disposition of an application to the Supreme Court of the United States for a Writ of Certiorari, and it appearing to the Court that a mandate and an execution issued out of the office of the Clerk of this Court on May 8, A. D. 1915, and being now fully advised in

the premises, doth order that said mandate and execution be and the same are hereby recalled, and that the issuance of a mandate herein be and it is hereby stayed thirty (30) days from this date.

204 437—20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Appellants.

Appeal from Superior Court, Cook County.

Mr. Justice McSurely delivered the opinion of the court.

Plaintiff brought suit in the Superior Court of Illinois on a judgment recovered in the State of Tennessee against these defendants, and had judgment here. Defendants have appealed.

The declaration alleged the recovery of a judgment by plaintiff against both defendants in the Circuit Court of Chester County, Tennessee; that thereafter defendants sued out a writ of error from the Court of Civil Appeals of Tennessee to revise and correct the said judgment, and that the Court of Civil Appeals affirmed the judgment of the lower court and entered judgment for plaintiff against defendants for a certain sum of money and costs; that thereafter defendants filed a petition for certiorari in the Supreme Court of Tennessee to review the judgment of the Court of Civil Appeals; that the cause was heard by the Supreme Court and that it was adjudged that said "writ of certiorari" be dismissed. Attached to the declaration is an instrument entitled "Copy of instrument sued upon," which purports to be a copy of the judgment of the Circuit Court of Chester County, Tenn., and of the judgment of the Court of Civil Appeals and of the Supreme Court. One of the points urged by de-
205 fendants is that this is not a copy of the instrument sued on, as required by the Illinois statute (par. 32, chap. 110) to be attached to the declaration, because it is not authenticated according to the act of congress (title 15, chap. 17, sec. 905 R. S., U. S.). We hold that the copy attached to the declaration is within the requirement of our statute; the act of congress is concerned with the admissibility of evidence of a judgment of another state. Neither is it necessary, as is suggested, to attach to the declaration copies of all the proceedings in the Tennessee courts. This suit is not upon the proceedings or upon any certificates of exemplification, but upon the judgment.

It was not necessary for plaintiff in her declaration to allege jurisdiction of the courts of Tennessee. Rae v. Hulbert, 17 Ill. 572; Black on Judgments, par. 875.

The substantial question presented has to do with the jurisdiction of defendants by the Tennessee courts. This issue was raised by appropriate pleadings in the case in the Circuit Court of Chester County, and there it was adjudged that the court had jurisdiction of the defendants. Defendants then sued out of the Civil Court of Appeals

of Tennessee a writ of error seeking to revise and correct the judgment of the Circuit Court. Upon hearing the Civil Court of Appeals considered a transcript of the record from the Circuit Court, which included the evidence, and rendered an opinion discussing at length the question of jurisdiction and affirming the judgment of the lower court and entered a judgment for plaintiff against the defendants. Subsequently the Supreme Court by its order found that the Circuit Court did have jurisdiction of the defendants, and ordered the writ of certiorari dismissed and entered judgment for costs. There
206 can be no doubt that the question of jurisdiction was adjudicated in the Tennessee courts, on a writ of error sued out by themselves.

The claim of defendants is that regardless of this adjudication they may raise the same question whenever and wherever in any other state than Tennessee suit is brought on this judgment. After an examination of the cases cited in support of this claim, we have found none directly in point. The decisions cited by defendants have to do with cases where the court entering judgment assumed jurisdiction but did not expressly consider or pass upon the question of its jurisdiction, or where there is a mere recital in the judgment rendered by the court of another state that it did have jurisdiction, and it was held in Forsyth v. Barnes, 228 Ill. 326, that this mere recital would not prevent the courts of another state from inquiring into the question of jurisdiction. Other of the decisions discuss the question whether a court of appellate jurisdiction is precluded from enquiring into the question of jurisdiction of the lower court by the fact that defendant may have filed a special appearance to contest the point of jurisdiction, and when defendant's contention was overruled filed an answer to the merits of the case. Such a case is Harkness v. Hyde, 98 U. S. 476. The case before us manifestly does not fall within any of these classes, for we have here a case where the issue of the jurisdiction of the parties was raised and adjudicated after full hearing,—all of which appears from the proceedings in this case and not merely as a matter of recital. As against the position of defendants we find a statement in 2 Black on Judgments, sec. 901, which meets with our approval:

"Before leaving this point it is necessary to remark that there is good authority for the proposition that if it appears affirma-
207 tively from the record of the judgment, and as a matter of adjudication, that the defendant had legal notice of the suit or duly authorized an appearance to be entered for him, then he is no longer at liberty to allege a want of jurisdiction. The reason of this is obvious. In such a case, the question of jurisdiction would be one of the grounds of defense to the original action, there set up and adjudicated, and of course equally concluded with any other defense. And hence the principle which forbids a re-examination of the merits of the controversy would apply."

In accord with this is the decision in Van Matre v. Sankey, 148 Ill. 536, where the court says, on page 553: "It having been determined, upon direct proceeding, by the court of last resort of the State in which the decree was rendered, that the court of common pleas had jurisdiction to enter the decree, we are required to give it full faith

and credit." And in Chicago Title & Trust Co. v. Storage Co., 260 Ill. 485, the court, in discussing the adjudication of a jurisdictional question by another court, used the following language:

"An estoppel by verdict is but another branch of the doctrine of res judicata, and it rests upon the same principle of law,—that is, that a matter once litigated between parties to a final judgment in a court of competent jurisdiction cannot again be controverted. When this doctrine is applied to a single question or point arising in the course of litigation which has finally been adjudicated it is designated as an estoppel by verdict, and the same question or point cannot again be litigated between the same parties in the same or any other court at law or in chancery, and neither party, nor their privies, will be permitted to allege anything inconsistent with the finding upon that question. * * * The doctrine of estoppel by verdict applies to questions arising upon an issue as to the jurisdiction of the court as fully and completely as to questions arising upon the trial of a cause upon its merits, and is not affected by the circumstance that the court may ultimately determine that it can go no farther."

Other cases holding to the same effect are Napier v. Gidiere, 40 Am. Dec. 613 (So. Carolina); Waldo v. Waldo, 52 Mich. 94; In re Wrisley, 126 Mich. 109; McClure v. Paducah Iron Co., 90 Mo. App. 567; Kinnier v. Kinnier, 45 N. Y. 535. The reasons given in support of the decisions in these cases seem to us conclusive against defendants' contention, and we are of the opinion that the judg-
208 & 209 ment of the Tennessee courts is res judicata upon the jurisdictional questions which were directly raised and adjudicated there, and that therefore it was not error for the court below to refuse to go into that question.

Other points made are without merit, and the judgment is affirmed.

Affirmed.

210 I, James S. McInerney, Clerk of the Appellate Court in and for the First District of the State of Illinois, and keeper of the Records, files and seal thereof, do hereby certify that the foregoing pages numbered 1 to 192 inclusive are a true, full and complete transcript of a certain certified transcript of the record of proceedings of the Superior Court of Cook County filed in the case of Bertha R. Cherry vs. Chicago Life Insurance Company and Federal Life Insurance Company in said Appellate Court on the 8th day of May, A. D. 1914.

I further certify that the foregoing pages numbered 193 to 208 inclusive are a true, full and complete transcript of the record and proceedings of said Appellate Court in the above entitled cause, of record in my office, and also of the opinion of said Appellate Court rendered therein, as the same now appear on file in my office.

In Testimony Whereof I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 17th day of May in the year of our Lord one thousand nine hundred and fifteen.

[Seal Appellate Court of the First District, State of Illinois, July 1, 1877.]

JAS. S. McINERNEY,

Clerk of the Appellate Court of the First District of Illinois.

211 Form No. 53.

UNITED STATES OF AMERICA,
State of Illinois,
Appellate Court, First District, ss:

I, James S. McInerney, Clerk of the Appellate Court within and for the First District of the State of Illinois, do hereby certify that the Honorable Edward O. Brown is Presiding Justice of said Appellate Court, duly commissioned and qualified, and was such Presiding Justice at the date of the foregoing certificate, and that his signature thereto attached is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Appellate Court at Chicago, in said State, this Seventeenth day of May, in the year of our Lord One Thousand Nine Hundred and fifteen.

[Seal Appellate Court of the First District, State of Illinois, July 1, 1877.]

JAMES S. McINERNEY,
Clerk of the Appellate Court of the First District, Illinois.

212 Form No. 52.

UNITED STATES OF AMERICA,
State of Illinois,
Appellate Court, First District, ss:

I, Edward O. Brown, Presiding Justice of the Appellate Court within and for the First District of the State of Illinois hereby certify that James S. McInerney, who signed the foregoing certificate, was at the time of signing the same, and is now, Clerk of the said Appellate Court within and for the First District of said State, duly commissioned and qualified; that said Court is a court of record, having a Clerk and Seal; that said attestation is in due form and by the proper officer, answering to the laws of the State of Illinois; and that the foregoing signature of said Clerk is genuine.

Witness my hand and seal at Chicago, in said State, this Seventeenth day of May in the year of our Lord One Thousand Nine Hundred and fifteen.

EDWARD O. BROWN, [SEAL.]
Presiding Justice Appellate Court,
First District, Illinois.

213 *Assignment of Errors.*

In the Supreme Court of United States.

CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Plaintiffs in Error,
vs.
BERTHA R. CHERRY, Defendant in Error.

Now come the said plaintiffs in error and each of them and say that in the record, proceedings and judgment of the Appellate Court for the First District of Illinois and of the Superior Court of Cook County, Illinois, there is manifest error in this, to-wit:

1. Because at the time of the bringing of the action in the Circuit Court of Chester County, Tennessee, and at the time of the alleged service upon plaintiffs in error and each of them they were foreign corporations and not transacting business in the State of Tennessee and no legal service having been had upon either of them neither of said Tennessee Courts had jurisdiction over plaintiffs in error or either of them and the judgment of each of said Tennessee Courts was and is null and void because rendered without due process of law and the action brought in the Superior Court of Cook County upon said judgments was brought upon judgments which were and are void and of no effect and therefore the judgment of said Superior Court of Cook County, Illinois, and the judgment of affirmance by the Appellate Court for the First District of Illinois were and are contrary to the provisions of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

2. Because each of said judgments of said Tennessee Courts, the judgment of said Superior Court of Cook County, Illinois, and the order and judgment of affirmance thereof by the Appellate Court for the First District of Illinois deprived said plaintiffs in error and each of them of their rights and property without due process
214 of law contrary to Section 1 of Article XIV of the Amendments to the Constitution of the United States and of Article V of the Amendments to the Constitution of the United States.

3. Because said Superior Court of Cook County, Illinois, erroneously found and adjudged that neither of plaintiffs in error had the right to introduce evidence on the trial of the cause in said Superior Court showing that neither of said Tennessee Courts had jurisdiction of plaintiffs in error or either of them and said Appellate Court for the First District of Illinois erroneously affirmed said finding and judgment of said Superior Court, all of which was and is in violation of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

4. Because neither of the papers filed with the declaration of defendant in error in the said Superior Court of Cook County, Illinois, was entitled to full faith and credit under Section 1 of Article IV

of the Constitution of the United States and the judgment of said Superior Court of Cook County, Illinois, that each of said papers was entitled to full faith and credit and the judgment of affirmance thereof by the said Appellate Court for the First District of Illinois were and are contrary to and in violation of the provisions of said Section 1 of Article IV of the Constitution of the United States and contrary to Section 905 of the Compiled Statutes of the United States, 1901, Vol. 1, p. 677.

5. Because the holding and judgment of said Superior Court of Cook County, Illinois, that the proceedings and judgment of each of said Tennessee Courts was res adjudicata and the order and judgment of affirmance thereof by the said Appellate Court for the First District of Illinois were and are contrary to and in violation of the provisions of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

6. Because the findings and judgment of said Superior Court of Cook County, Illinois, that plaintiffs in error could not attack collaterally each and all of the judgments of said Tennessee Courts
and the order and judgment of affirmance thereof by said
215 Appellate Court for the First District of Illinois were and are contrary to the provisions of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States for the reason that neither of said Tennessee Courts had jurisdiction by due and legal service of process over either of plaintiffs in error.

7. Because each of said judgments of said Tennessee Courts and the judgment of said Superior Court of Cook County, Illinois, and the order and judgment of Affirmance by said Appellate Court for the First District of Illinois, deprived each of plaintiffs in error of its rights and of its property without due process of law, contrary to and in violation of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

8. Because the said Circuit Court of Chester County, Tennessee, did not have jurisdiction over either of plaintiffs in error and its judgment was and is a nullity and void and each of plaintiffs in error had the right to attack said judgment collaterally in said action in said Superior Court of Cook County, Illinois, and in said Appellate Court for the First District of Illinois under the provisions of Sections 1 and 2 of Article IV of the Constitution of the United States, Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

9. Because the said Court of Civil Appeals of Tennessee did not have jurisdiction over either of plaintiffs in error and its judgment was and is a nullity and void and each of plaintiffs in error had the right to attack said judgment collaterally in said action in said Superior Court of Cook County, Illinois, and in said Appellate Court for the First District of Illinois under the provisions of Sections 1 and 2 of Article IV of the Constitution of the United States, Article

V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

10. Because the said Supreme Court of Tennessee of the State of Tennessee did not have jurisdiction over either of plaintiffs in error and its judgment was and is a nullity and void and each of
216 plaintiffs in error had the right to attack said judgment collaterally in said action in said Superior Court of Cook County, Illinois, and in said Appellate Court for the First District of Illinois under the provisions of Sections 1 and 2 of Article IV of the Constitution of the United States, Article V of the Amendments to the Constitution of the United States, and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

11. Because neither of plaintiffs in error was doing business in the State of Tennessee at the time of the bringing of said action in said Circuit Court of Chester County, nor at the time of the alleged service upon each of them and there was no due and legal service of process upon either of plaintiffs in error in said action in said Circuit Court of Chester County, Tennessee and said Circuit Court of Chester County did not have jurisdiction over either of plaintiffs in error in said action and the judgment rendered against said plaintiffs in error and each of them in said Circuit Court of Chester County, Tennessee, was without due process of law and contrary to and in violation of Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

12. Because at the time of the bringing of said action in said Circuit Court of Chester County, Tennessee, and at the time of the alleged service of process neither of plaintiffs in error had any agent in the State of Tennessee and neither of said plaintiffs in error at said times had an agent in the State of Tennessee upon whom due and legal service of process could be made and therefore said judgment of said Circuit Court of Chester County, Tennessee, was and is null and void and of no effect, no appearance having been entered in said cause in said Circuit Court of Chester County by either of plaintiffs in error, and contrary to and in violation of the provisions of Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

13. Because the said Superior Court of Cook County, Illinois, erred in refusing to allow plaintiffs in error or either of them to prove facts showing that at the time said suit was brought in said Circuit Court of Chester County, Tennessee, and at the time of the alleged service of summons upon said plaintiffs in error
217 neither of them was doing and transacting business in the State of Tennessee and did not have any agent in Tennessee who was authorized to represent them or either of them and upon whom legal service of process could be made, which refusal, holding and judgment of said Superior Court of Cook County, Illinois, and the order and judgment of affirmance thereof by said Appellate

Court for the First District of Illinois were and are contrary to and in violation of the provisions of Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

14. Because the statutes of Tennessee under which service of process upon plaintiff in error, Federal Life Insurance Company, was attempted to be had in said action in said Circuit Court of Chester County, Tennessee, to-wit, Sections 4545 and 4546 of Shannon's Code of the State of Tennessee, are unconstitutional and contrary to and in violation of Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

15. For that there are divers other errors, insufficiencies and uncertainties in said record, proceedings and judgments.

Wherefore plaintiffs in error and each of them pray that the aforesaid judgments of said Appellate Court for the First District of Illinois and said Superior Court of Cook County, Illinois, may be reversed, etc.

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Plaintiffs in Error.

CHARLES J. O'CONNOR,
Of Counsel for Plaintiffs in Error.

218 In the Appellate Court of Illinois, First District.

No. 20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE COMPANY, a Corporation, and FEDERAL LIFE INSURANCE COMPANY, a Corporation, Appellants.

Præcipe.

To the Clerk of said Court:

You hereby are requested to make a duly certified transcript of the record to be filed in the Supreme Court of the United States on writ of error allowed in the above entitled cause and to include in such transcript the following:—

Placita.

Declaration of appellee against appellants.

Pleas of Federal Life Insurance Company.

Pleas of Chicago Life Insurance Company.

Replication of appellee to first plea of Chicago Life Insurance Company.

Replication of appellee to third plea of Chicago Life Insurance Company.

Replication of appellee to first plea of Federal Life Insurance Company.

Replication of appellee to third plea of Federal Life Insurance Company.

Amended replication of appellee to second plea of Chicago Life Insurance Company.

Amended replication of appellee to second plea of Federal Life Insurance Company.

Rejoinder of Federal Life Insurance Company to amended replication of appellee to its second plea.

219 Rejoinder of Chicago Life Insurance Company to amended replication of appellee to its second plea.

Statement of proceedings in the Court on the 24th of November, 1913.

That part of the bill of exceptions of the Superior Court of Cook County, Illinois, relating to the offer *of* evidence of Plaintiff's Exhibit 1 and the objections thereto on pages 69 to 80 inclusive of the certified copy of the record of the Appellate Court.

That part of the bill of exceptions of the Circuit Court of Chester County, Tennessee, appearing on pages 103 and 104 of the certified copy of the record of the Appellate Court.

Motion on behalf of Federal Life Insurance Company and concurrence of Chicago Life Insurance Company at the close of plaintiff's case to find the issues for defendants, and exceptions to the denial thereof.

Motion of Federal Life Insurance Company for peremptory instruction; denial of motion and exceptions.

Motion of Chicago Life Insurance Company for peremptory instruction; denial of motion and exceptions.

Testimony of Charles A. Atkinson; rulings of the court thereon and exception.

Testimony of Samuel G. Hamblen; rulings of the court thereon and exceptions.

Proceedings of the court at the close of the evidence for defendants, pages 161 to 166 inclusive of certified copy of the record of the Appellate Court.

The following grounds for motion of the Federal Life Insurance Company for a new trial, to-wit: 9, 16 to 24 inclusive.

The following grounds for motion of Chicago Life Insurance Company for a new trial, to-wit: 8, 9, 17 to 25 inclusive.

The following grounds for motion of Federal Life Insurance Company in arrest of judgment, to-wit: 7 to 15 inclusive.

The following grounds for motion of Chicago Life In-
220 surance Company in arrest of judgment, to-wit: 7 to 15 inclusive.

Denial of said motions; judgment on verdict; exceptions, being all on page 180 of the certified copy of the record of the Appellate Court.

The following assignments of error by Chicago Life Insurance Company, to-wit: 5, 8, 9, 15 to 24 inclusive, together with prayer at the end of said assignments of error.

The following assignments of error by Federal Life Insurance

Company, to-wit: 5, 8, 9, 15 to 24 inclusive, together with prayer at the end of said assignments of error.

Judgment of said Appellate Court.

Denial of petition for rehearing by Chicago Life Insurance Company and Federal Life Insurance Company.

Denial of petition for said Companies for certificate of importance and appeal to the Supreme Court of Illinois.

Record of proceedings in the Supreme Court.

Opinion of said Appellate Court.

Bond given by appellants on allowance of writ of error by Supreme Court of the United States to said Appellate Court.

This præcipe.

Attach to said certified transcript petition for writ of error from Supreme Court of the United States to said Appellate Court, petition for reversal of judgment of said Appellate Court and Superior Court of Cook County, Illinois, and assignments of error in the Supreme Court of the United States.

CHARLES J. O'CONNOR,
CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Appellants.

Service of above præcipe acknowledged and accepted this 7th day of June, 1915.

ATWOOD, PEASE & LOUCKS,
Attorneys for Appellee.

221 In the Appellate Court of Illinois, First District.

No. 20509.

BERTHA R. CHERRY, Appellee,
vs.
CHICAGO LIFE INSURANCE COMPANY, a Corporation, and FEDERAL LIFE INSURANCE COMPANY, a Corporation, Appellants.

Præcipe.

To the Clerk of said Court:

You are hereby requested to include in the duly certified transcript of record to be filed in the Supreme Court of the United States on writ of error allowed in the above entitled cause, all portions of the record of the proceedings in the Superior Court of Cook County, Appellate Court of Illinois, and Supreme Court of Illinois, not specified in the præcipe heretofore filed by appellants in said cause.

ATWOOD, PEASE & LOUCKS,
Attorneys for Appellee.

222 To the Honorable Edward D. White, Chief Justice of the United States, and to the Honorable James C. McReynolds, Associate Justice of the Supreme Court of the United States, and to the other justices of said honorable court and to the Honorable the Supreme Court of the United States:

The petition of the Chicago Life Insurance Company and the Federal Life Insurance Company, both corporations organized and existing under and by virtue of and domiciled in the State of Illinois, respectfully shows:—

I.

That heretofore and in February, 1907, an action was commenced in the Circuit Court of Chester County, Tennessee, by Bertha R. Cherry, as plaintiff, against your petitioners as defendants.

The complaint in said action alleged that on the 21st day of September, 1905, your petitioner, the Chicago Life Insurance Company insured the life of Rufus M. Cherry under a policy of insurance issued to him and in which policy the said Bertha R. Cherry was named as beneficiary and that in said policy the said Chicago Life Insurance Company promised to pay to said Bertha R. Cherry the sum of $1,250.00 immediately upon receipt and approval of proofs of death of the said Rufus M. Cherry; that on September 22, 1906, your petitioner, Federal Life Insurance Company, reinsured said policy and assumed the obligations of said Chicago Life Insurance Company thereunder according to the terms and conditions of a reinsurance contract entered into between your petitioners on the date last mentioned; that said Bertha R. Cherry furnished due proofs of the death of said Rufus M. Cherry; that said Rufus M. Cherry and said Bertha R. Cherry had performed all the conditions required under said policy to be performed by them or either of them; that demand was made of your petitioners for the payment of the amount alleged to be due under said policy with interest and attorney's fees; that no part of the amount due under said policy had been paid and that there was justly owing from your petitioners the sum of $1,250.00 with interest from the date of the death of said Rufus M. Cherry and 25% of the amount due as reasonable attorney's fees and asking judgment therefor.

223 A summons was issued in said action for your petitioner, Chicago Life Insurance Company, directed to the sheriff of Davidson County, Tennessee, which summons commanded said sheriff "to summons said Chicago Life Insurance Company, a foreign corporation authorized to do business in Tennessee, if it be found in your county" to appear before the judge of said Circuit Court to be held in the said County of Chester on the first Monday in June, 1907, then and there to answer Bertha R. Cherry in an action of debt due on policy issued by Chicago Life Insurance Company on the life of said Rufus M. Cherry for her benefit for the sum of $1,250.00 and the further sum of $500.00 attorney's fees and interest, to her damage, $1,800.00. Said summons was issued by the clerk of said Cir-

cuit Court of Chester County; that on the 20th day of May, 1907, the Insurance Commissioner of Tennessee made an endorsement on the back of said summons of which the following is a copy:

"By virtue of authority in me vested I have today acknowledged service of the within summons for the Chicago Life Insurance Company, this 20th day of May, A. D. 1907, at 11:30 a. m.

REAU E. FOLK,
Insurance Commissioner."

Said summons with said endorsement thereon was filed in said Circuit Court of Chester County on or about May 28, 1907.

That on or about the 24th day of June, 1907, the Clerk of the said Circuit Court of Chester County issued and delivered to the sheriff of said county a summons commanding him "to summon Federal Life Insurance Company, a foreign corporation, if it be found in your county," to appear before the judge of said Circuit Court on the first Monday in October, 1907, then and there to answer Bertha R. Cherry in an action of debt due by policy issued by the Chicago Life Insurance Company on the life of Rufus M. Cherry for her benefit in the sum of $1,250.00 and reinsured by said Federal Life Insurance Company and the further sum of $500.00 attorney's fees and interest, to her damage, $1,800.00; that thereafter, to-wit, on or about the 24th day of June, 1907, said sheriff of said Chester County returned said summons with an endorsement thereon of which the following is a copy:

224 "Executed as within directed by reading the same to G. G. Butler, agent of the Federal Life Insurance Company, or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued upon and who was the agent of the Chicago Life Insurance Company, and it being the agent of the Federal Life Insurance Company in the delivery of the policy sued upon and represented said corporation at the time.

This 24th day of June, 1907.

B. F. WEIR,
Sheriff of Chester Co.

Filed June 28, 1907.

C. L. PARRISH,
Clerk."

II.

That on or about the 16th day of September, 1907, your petitioner, Chicago Life Insurance Company, filed its plea in abatement in said cause attacking the jurisdiction of said Circuit Court of Chester County over said Chicago Life Insurance Company and in which plea in abatement the said Chicago Life Insurance Company averred that the summons for said Chicago Life Insurance Company was addressed to the sheriff of Davidson County, Tennessee, and not Chester County, Tennessee, in which said action was brought and that said summons did not show that it was a counter-part summons

or that there was a defendant who had been served with process in said Chester County; that the return of said summons showed on its face that it was never served upon said Insurance Commissioner by the sheriff of Davidson County but that service of process was acknowledged on behalf of said Chicago Life Insurance Company by said Commissioner; that the Acts of 1895, Chap. 160, Sec. 9, Sub-Sec. 3, requiring a foreign insurance company to file a power of attorney with the Insurance Commissioner, constituting him an agent upon whom process may be served did not authorize said commissioner to acknowledge service of process upon behalf of a foreign insurance company, but expressly provide- that such process must be served upon such commissioner by the proper officer of the county in which the commissioner has his office; that the said insurance commissioner was not in said County of Chester at the time said summons was issued and was not in said Chester County at the time he acknowledged service of process on behalf of the Chicago Life Insurance Company and that under said Act authorizing the service of process upon said commissioner he was made the statutory agent of and merely stood in the place of the Chicago Life Insurance Company; that therefore the suit must be brought in the county where said insurance commissioner lives and where he has his office
225 and could not be brought in the county where he did not live and where he did not have his office and when he was not in the County either at the time of the issuance of the writ or at the time of the acknowledgment of service of process, and asking that the service of summons be quashed and abated and that suit be dismissed as to said Chicago Life Insurance Company.

That thereafter said plaintiff, Bertha R. Cherry, demurred to said plea in abatement and for grounds of demurrer stated that none of the reasons assigned by said Chicago Life Insurance Company in said plea in abatement was sufficient to show want of legal service; that from the facts appearing from the process issued and returned and from the allegations in said plea in abatement the said Chicago Life Insurance Company had been legally and properly served with process and was properly before said Circuit Court of Chester County; that on or about February 3, 1908, the said Circuit Court of Chester County sustained said demurrer and overruled and disallowed said plea in abatement of said Chicago Life Insurance Company and leave was granted it to plead and thereupon its attorney stated in open court he was not authorized to represent said Company further and an exception was entered of record to the action of the court to the sustaining of said demurrer and overruling of said plea in abatement.

III.

That your petitioner, Federal Life Insurance Company, filed a certain plea in abatement in said action in said Chester County, challenging the jurisdiction of said Circuit Court, alleging that the said summons issued for said Federal Life Insurance Company showed that it was served upon one, G. G. Butler, who was designated as agent of the Federal Life Insurance Company or who represented it

at the time of the delivery of the policy sued on and that service was attempted under sections 4545 and 4546 of Shannon's Code of the State of Tennessee providing that service of process can be had on foreign corporation by service upon the agent who represented the corporation at the time of the transaction out of which the suit arose; that said Butler was not the agent of said Federal Life Insurance Company at the time the application for said policy was made nor at the time said policy was delivered; that said Butler had never been the agent of said Federal Life Insurance Company and it had never had any relation with said Butler in any way whatever; that said Federal Life Insurance Company had never done business in the State of Tennessee, had never been licensed to do business in that state and could not have had an agent there who was authorized either to solicit applications or deliver policies and asked that the summons be quashed and suit abated.

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Thereafter on or about June 28, 1908, the said plaintiff, Bertha R. Cherry, filed her plea to the said plea in abatement of said Federal Life Insurance Company denying the allegations in said plea in abatement that said Butler was not the agent of said Federal Life Insurance Company when said policy was issued and delivered to said Rufus M. Cherry; denied that said Butler had never been the agent of said Federal Life Insurance Company and that he had never had any relation with said Company whatever; denied that said Company had never done business in Tennessee and alleged that the said policy was turned over to said Butler by said Federal Life Insurance Company to be delivered to said Rufus M. Cherry and that said Butler did deliver and turn over said policy to him as the agent of said Federal Life Insurance Company and that said Federal Life Insurance Company had many policies outstanding in said State of Tennessee upon which premiums were being paid to said Federal Life Insurance Company and that it was doing a life insurance business in said State of Tennessee.

Thereafter on or about February 3, 1908, certain proceedings were had in said Circuit Court of Chester County upon said plea in abatement filed by said Federal Life Insurance Company and issue joined thereon by said Bertha R. Cherry and the same was submitted to the court without the intervention of a jury and after hearing the proof introduced and argument of counsel said court found the issues in favor of said plaintiff, overruled said plea in abatement of said Federal Life Insurance Company and gave it leave to plead in said cause if it so desired when its attorney stated in open court that he was not authorized further to represent said Federal Life Insurance Company and to which action of the court in dismissing and overruling said plea in abatement the said Federal Life Insurance Company excepted.

On the hearing of said plea in abatement of said Federal Life Insurance Company it was agreed by and between said Company and said Bertha R. Cherry that the said Company had never been licensed to do business in the State of Tennessee and had never issued any policies of insurance in that state; that the application upon which

said policy was issued to said Rufus M. Cherry was made by
227 him on the regular application blanks of the Chicago Life Insurance Company through its agent, G. G. Butler, and at said time the said Butler was not the agent of the Federal Life Insurance Company and that the policy sued on in said action in said Circuit Court of Chester County was reinsured in said Federal Life Insurance Company by said Chicago Life Insurance Company.

That after the overruling and dismissal of said pleas in abatement of your petitioners they were called in open court and did not respond and default was entered and on or about February 3, 1908, the said Circuit Court rendered and entered judgment against your petitioners, jointly and separately, for the sum of $1,666.25 and costs of suit and authorized the issuance of execution.

IV.

Your petitioners aver that under the law in force at the time of the bringing of said action in said Circuit Court of Chester County and at the time of the alleged service of process upon your petitioners and at the times when said pleas in abatement were overruled and dismissed and said judgment entered in said Circuit Court of Chester County, the filing of said pleas in abatement challenging the jurisdiction of said Circuit Court and the entry of the appearance of your petitioners for the purpose of contesting said jurisdiction and not for a trial on the merits of the said cause was not a submission to the jurisdiction of said Circuit Court by your petitioners and that said Circuit Court had no right, power or authority to render said judgment against your petitioners or either of them and that said judgment always has been and still is null, void and of no effect.

V.

That on or about the 31st day of December, 1908, your petitioners separately sued out of the Court of Civil Appeals of Tennessee writs of error asking for the reversal of said judgment for the reason that process had not been served legally upon either of your petitioners and that the Circuit Court of said Chester County did not have jurisdiction over your petitioners or either of them and that therefore said judgment of said Circuit Court was null and void; that on or about the 23d day of January, 1909, the said Court of Civil Appeals
affirmed the judgment of said Circuit Court and rendered
228 judgment jointly and separately against your petitioners in the sum of $1,666.25 and $95.97 interest, together with costs and authorized the issuance of execution.

VI.

That thereafter your petitioners filed in the Supreme Court of Tennessee their joint petition for writ of certiorari and that on or about April 29, 1909, the said Supreme Court entered an order that said cause be placed on the docket of that court for hearing at the

then present term; that thereafter the said cause came on to be heard in said Supreme Court on said petition for certiorari, assignments of error, brief of counsel and transcript of the record from the Circuit Court of said Chester County and said Supreme Court found that said Circuit Court of Chester County did have jurisdiction over your petitioners and that they and each of them were properly before said Circuit Court by due process of law and there was no error in the said Court of Civil Appeals dismissing the writs of errors sued out by your petitioners, affirming in all things the said judgment of said Court of Civil Appeals, dismissing said writ of certiorari and entering judgment for costs against your petitioners and in favor of said Bertha R. Cherry.

VII.

That thereafter, to-wit, on or about the 14th day of February, 1910, the said Bertha R. Cherry instituted an action in the Superior Court of Cook County, Illinois, and in her complaint she averred that on the 3d day of February, 1908, at a term of the Circuit Court of Chester County, Tennessee, by the consideration and judgment of said Court she recovered against your petitioners in a certain action of debt the sum of $1666.25 and costs taxed at $39.55 whereof your petitioners were convicted as by the record thereof remaining in said court more fully appears and which judgment still remained in full force; that on the 31st day of December, 1908, your petitioners sued out of the Court of Civil Appeals of Tennessee writs of error to revise and correct said judgment; that thereafter on the 23rd day of January, 1909 by the consideration of said Court of Civil Appeals the said judgment of said Circuit Court of Chester County was affirmed and it was ordered and adjudged by said Court of Civil Appeals that said Bertha R. Cherry have and recover from your petitioners jointly and separately the sum of $1666.25 and
229 costs, amounting to $95.79 and interest on said judgment from January 23, 1909, amounting to $16.40, whereof your petitioners were convicted as by the record thereof remaining in the said court more fully appears and that said judgment still remained in full force; that thereafter your petitioners filed a petition for writ of certiorari in the Supreme Court of Tennessee to review the judgment of said Court of Civil Appeals and that on June 12, 1909 said cause came on to be heard and was heard by said Supreme Court upon said petition, assignments of error, brief of counsel and transcript of the record of the Circuit Court of Chester County, Tennessee, and by the consideration of said Supreme Court it was ordered, adjudged and decreed that the said writ of certiorari be dismissed and that said Bertha R. Cherry recover from your petitioners her costs taxed in the sum of $28.90 whereof your petitioners were convicted as by the record thereof remaining in said court more fully appears and that said judgment still remained in full force and that no part thereof had been paid, and asked judgment in the sum of $2500.00.

Filed with said declaration of said Bertha R. Cherry in said Su-

perior Court of Cook County, Illinois, was a paper purporting to be a copy of the judgment of the Circuit Court of said Chester County, Tennessee, in which paper it was set forth there was an order sustaining demurrer of said Bertha R. Cherry to and overruling the plea in abatement of said Chicago Life Insurance Company; that said cause was further heard on a plea in abatement filed by said Federal Life Insurance Company, the pleas of said Bertha R. Cherry thereto and issue joined thereon and that same was submitted to the court without the intervention of a jury and after hearing proof and argument, the court found in favor of said Bertha R. Cherry, overruled the pleas in abatement and gave leave to Federal Life Insurance Company, if it so desired, to plead in said cause, when its counsel stated in open court that he was not authorized to further represent your petitioner; that thereupon your petitioners were solemnly called in open court but came not and made default; jury impanelled, verdict for $1666.25, being $1250, the face of said policy, interest amounting to $75.00 and $341.25 costs and expenses incurred by said Bertha R. Cherry, including attorney's fees, and that thereupon judgment was rendered by said Circuit Court jointly and separately against your petitioners in favor of said Bertha R. Cherry for said sum of $1666.25 and authorized the issuance of execution. Affixed to said paper was the name and title as follows: "C. L. Parrish, Clerk," there being nothing to show in said paper of what court, if any, the said C. L. Parrish was clerk and no authentication by any official of said Circuit Court of Chester County that said paper was or is a copy of the instrument sued on in said Superior Court of Cook County.

That there was also filed with said declaration of said Bertha R. Cherry in said cause in said Superior Court of Cook County a paper entitled, "Chicago Life Insurance Co. and the Federal Life Insurance Co. vs. Mrs. Bertha Cherry, No. 1 Chester Law." In said paper it is set forth that said cause was heard upon the transcript of the record from the Circuit Court of Chester County and it appearing to the court that there was no error in the judgment of the court below, the same was in all things affirmed and that it was ordered and adjudged that Bertha R. Cherry have and recover of your petitioners jointly and severally the sum of $1666.25 and costs That affixed to said last mentioned paper so filed with said declaration are five names with no title or official designation and that there is nothing in said paper to show in what court the proceedings therein mentioned were had nor is said paper authenticated in any manner as being a copy of the judgment of the Court of Civil Appeals of the State of Tennessee.

There was also filed with said declaration in said Superior Court of Cook County a paper purporting to be a copy of the judgment of said Supreme Court of the State of Tennessee mentioned in said declaration and in which paper it is set forth that the cause came on to be heard and was heard by said Supreme Court on the petition filed by your petitioners for writ of certiorari to review the judgment of said Court of Civil Appeals, assignments of error, briefs of counsel and transcript of record of said Circuit Court of Chester

County and that the Supreme Court was of the opinion that said Circuit Court did have jurisdiction over your petitioners and that they and each of them were properly before said court by due process of law and that there was no error in rendering the judgment in said Court of Civil Appeals and rendering judgment against your petitioners for costs. That said last mentioned paper so filed with said declaration is not authenticated by any officer in any manner as being a copy of the judgment of the Supreme Court of Tennessee; that neither of said papers so filed with said declaration was a compliance with Section 1, of Article IV of the Constitution of the United States, requiring full faith and credit to be
231 given in each state to the public acts, records and judicial proceedings of every other state, neither were said papers nor either of them, in conformity with Section 905 of the Revised Statutes of the United States which provides the manner in which the records and judicial proceedings in one state shall be proven or admitted in the courts of another state; that neither of said papers so filed with said declaration was entitled to full faith and credit as provided in said Section 1 of Article IV of the Constitution of the United States and in said Statute.

That thereafter before filing their pleas to said declaration of said Bertha R. Cherry in said Superior Court of Cook County, your petitioners filed written motions for a rule on plaintiff to file copies of the instruments sued upon which motions were by said Superior Court denied and to which rulings each of your petitioners duly excepted at the time.

That thereafter your petitioner, Federal Life Insurance Company, filed certain pleas to the declaration of said Bertha R. Cherry filed in said Superior Court of Cook County, Illinois, which pleas were filed on or about April 21, 1910, the first plea being that of nul tiel record. In the second plea said Federal Life Insurance Company averred that before and at the time of the alleged recoveries of the said several supposed judgments in the said declaration mentioned and before and at the time of the supposed service of process it was a corporation organized and doing business under the laws of the State of Illinois and was not licensed to nor doing business in the State of Tennessee; that it was not served with process in said suits or either of them and did not accept or authorize anyone for it to accept service of process in said suits and did not authorize an appearance by attorney or otherwise in said suits; did not have notice of said supposed proceedings nor was it or its officers or agents upon whom service could be had found or served with process in the said supposed actions mentioned in said declaration of said Bertha R. Cherry. In its third plea the said Federal Life Insurance Company averred that said Bertha R. Cherry ought not to have her action against it because it says it is a corporation organized and doing business under the laws of the State of Illinois and that at the time of the supposed recoveries in the said declaration mentioned it was not licensed to do nor doing business in the State of Tennessee and that the said several supposed recoveries

in the said declaration mentioned were recoveries in whole
232 or in part on and for a penalty to enforce the penal law of the State of Tennessee.

Your petitioner, said Chicago Life Insurance Company in said Superior Court of Cook County filed a similar plea on or about June 9, 1910.

That thereafter the said plaintiff, Bertha R. Cherry, moved said Superior Court to strike each of said pleas of each of your petitioners from the files which motion on February 25, 1911 was overruled by said Superior Court; that the said Bertha R. Cherry filed separate replications to each of the pleas of your petitioners which replications were substantially the same as to each of said pleas. In the replication to the first plea Bertha R. Cherry averred that there was a record of said recoveries in the said Circuit Court of Chester County and said Court of Civil Appeals and the Supreme Court of Tennessee. As to the second plea plaintiff filed similter. As to the third plea said Bertha R. Cherry averred that the said recoveries were not in whole or in part on and for a penalty to enforce the penal law of the State of Tennessee.

That on June 23, 1912, leave was granted said Bertha R. Cherry to amend her replication to the second pleas of your petitioners and alleged therein that your petitioners were estopped from denying the jurisdiction of the courts of Tennessee and each of them over your petitioners and each of them; avers the issuance of the summons hereinabove set forth and the returns thereon also hereinabove set forth; avers that the service of each of said writs was in accordance with the statute laws of Tennessee and that each of your petitioners appeared as required by said writs and submitted to the jurisdiction of said Circuit Court of Chester County; sets forth the pleas in abatement filed in the said Circuit Court of Chester County by your petitioners, the demurrer to the plea in abatement of your petitioner, the Chicago Life Insurance Company, the filing of the pleas to the plea in abatement of your petitioner the Federal Life; sets forth the suing out of writs of error by your petitioners from said Court of Civil Appeals and the filing of petition for writ of certiorari in the Supreme Court of Tennessee and the proceedings had in both of said courts; sets out that in the order entered by the Supreme Court that court was of the opinion that the Circuit Court of Chester County did have jurisdiction of both your petitioners and that they were properly before said court by due process of law; alleges that the question of jurisdiction raised by
233 your petitioners and each of them is the same and identical question of jurisdiction raised by your petitioners and each of them in each of said courts in the State of Tennessee and that by reason of the facts set forth in said replications and the judgments of said three courts of Tennessee the question of jurisdiction presented by your petitioners has been fully and completely adjudicated and therefore your petitioners are estopped from questioning the jurisdiction of either of the Tennessee Courts.

That your petitioners filed separate motions to strike from the files the said amended replications and filed therewith demurrers, al-

leging that the matters set forth in said replications are not sufficient in law for the plaintiff to maintain her action and that your petitioners are not bound in law to answer same and setting forth also that the matters and things alleged in said amended replications were such matters and things as said plaintiff was obliged to allege in her declaration and prove which motions and demurrers were denied; that your petitioners filed separate rejoinders to said amended replication and in the rejoinder of your petitioner, Federal Life Insurance Company, it is averred that neither the said Butler nor the said Chicago Life Insurance Company had any right, power or authority to act as agent for or represent it and that neither of said attorneys mentioned in said replication as representing it had any right, power or authority to appear for it to give to either of said Tennessee Courts any jurisdiction of any kind or nature over its person and that neither of said Tennessee Courts had jurisdiction over your petitioner, Federal Life Insurance Company, and denied that it at any time submitted to the jurisdiction of either of said Tennessee Courts and averring that neither of said Tennessee courts had any right, power or authority to render any judgment against it.

In the rejoinder of your petitioner, the Chicago Life Insurance Company, to said amended replication it was alleged that the summons was never served in said amended replication shows on its face that it was never served upon the Insurance Commissioner of the State of Tennessee by any officer but that service of process was acknowledged on behalf of said Chicago Life Insurance Company by said Insurance Commissioner; that under the laws of the State of Tennessee the Insurance Commissioner of that State did not have power or authority to acknowledge service of process on behalf of foreign insurance companies but that said laws specifically provide that such process must be served upon such insurance com-
234 missioner by the proper officer; that said Chicago Life Insurance Company was a corporation organized and doing business under the laws of the State of Illinois and was not licensed to nor was it doing business in the State of Tennessee and that it was not served with process in said Circuit Court of Chester County, Tennessee, did not acknowledge or accept service nor authorize anyone to acknowledge or accept service of process in said suit; that neither of said Tennessee courts had jurisdiction over the person of said Chicago Life Insurance Company at any time.

VIII.

Said cause in said Superior Court of Cook County was tried before the court and jury and on the trial of said cause said Bertha R. Cherry, over the objections of each of your petitioners introduced in evidence an alleged exemplification of the proceedings and records in the said cause in each of said courts of the State of Tennessee, which exemplification was marked Plaintiff's Exhibit 1, and at the close of all the evidence each of your petitioners moved the court in writing to take the case from the jury and to instruct the jury

to find the issues in favor of your petitioners and each of them and accompanied said motions with written instructions which motions the court denied and refused to give said instructions, to each of which rulings of the court your petitioners duly excepted; that thereupon the court instructed the jury to find the issues for the plaintiff and the jury returned a verdict finding for the plaintiff in the amount of $1801.59 debt and damages $425.82, to all of which your petitioners duly excepted.

That thereafter your petitioners filed separate motions for a new trial and same were overruled and denied and exceptions duly taken; that in the said motion for a new trial of your petitioner, Federal Life Insurance Company, several causes and grounds for the same were set forth, among them being the following:

"Because the Circuit Court of Chester County, Tennessee, did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

Because the Court of Civil Appeals of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

Because the Supreme Court of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

235 Each of said judgments in said Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee and the judgment herein rendered was rendered without due process of law and in violation of the Constitution- of the State of Illinois and of the United States.

Because this defendant at the time said action was brought in the Circuit Court of Tennessee and at the time of the alleged service upon it was not doing or transacting business in the State of Tennessee and had no agent within the State of Tennessee upon whom service could be had.

Because each of said judgments of said Tennessee courts and the judgment in this court deprived this defendant of its rights and of its property without due process of law.

Because the court erred in refusing to allow this defendant to prove additional facts showing that neither of said Tennessee courts had jurisdiction to render a judgment against this defendant.

Because the court erred in refusing to allow this defendant to prove facts showing that at the time said suit was brought in the Circuit Court of Chester County, Tennessee, and at the time of the alleged service of summons upon this defendant it was not doing or transacting business in the State of Tennessee and did not have an agent in Tennessee who was authorized to represent this defendand and upon whom service could be had and the statute of the State of Tennessee under which said service was had was unconstitutional and contrary to the laws of the United States.

Because the court erred in holding that the judgment of the Court of Civil Appeals of the State of Tennessee was res adjudicata.

That in the motion for a new trial filed by your petitioner, Chicago Life Insurance Company the same reasons or grounds therefor

were set forth as contained in the motion for a new trial of your petitioner, Federal Life Insurance Company.

That each of your petitioners filed motions in arrest of judgment and same were overruled and denied. In the motion in arrest of judgment filed by your petitioner, Federal Life Insurance Company, several causes and grounds therefor were set forth, among them being the following:

"Because the Circuit Court of Chester County, Tennessee, did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

Because the Court of Civil Appeals of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

Because the Supreme Court of the State of Tennessee did not have jurisdiction of this defendant and its judgment was and is a nullity and void.

Because each of said judgments in said Circuit Court, Court of Civil Apeals and the Supreme Court of the State of Tennessee was rendered without due process of law and in violation of the Constitution of the State of Illinois and of the United States.

236 Because this defendant at the time said action was brought in the Circuit Court of Tennessee and at the time of the alleged service upon it was not doing or transacting business in the State of Tennessee and had no agent within the State of Tennessee upon whom service could be had.

Because each of said judgments of said Tennessee courts deprived this defendant of its rights and of its property without due process of law.

Because the court erred in refusing to allow this defendant to prove additional facts showing that neither of said Tennessee courts had jurisdiction to render a judgment against this defendant.

Because the court erred in refusing to allow this defendant to prove facts showing that at the time said suit was brought in the Circuit Court of Chester County, Tennessee, and at the time of the alleged service of summons upon this defendant it was not doing or transacting business in the State of Tennessee and did not have an agent in Tennessee who was authorized to represent this defendant and upon whim service could be had.

Because the court erred in holding that the judgment of the Court of Civil Appeals of the State of Tennessee was res adjudicata.

That on November 24, 1913, judgment was rendered in favor of said Bertha R. Cherry in said suit in said Superior Court of Cook County jointly and severally against your petitioners in the sum of $1801.50 debt and damages $425.82 costs and execution awarded.

Appeal was prayed by your petitioners from said judgment to the Supreme Court of Illinois; appeal allowed; amount of bond fixed; appeal bond approved and filed and bill of exceptions duly signed, sealed and filed December 22, 1913.

On the trial of said cause in said Superior Court your petitioner, Federal Life Insurance Company offered to prove by a qualified witness that at the time of the bringing of said suit in said Circuit

Court of Chester County and at the time of the alleged service upon it the said Company was incorporated under the laws of the State of Illinois and doing business under said laws; that it never applied for a license to do business in the State of Tennessee and never was licensed to do business in that state at any time; that said G. G. Butler upon whom summons purported to be served was not its agent at the time of the bringing of said suit or at the time of said alleged service; that said Company only authorized attorneys to appear for it in said cause for the sole purpose of challenging the jurisdiction of the court and with no authority to enter any appearance other than its special appearance for the purpose of questioning such jurisdiction; that the said Chicago Life Insurance Company was never at any time for any purpose its agent and that the said G. G. Butler was not its agent at any time in reference to the
237 delivery of the policy sued on; that at the time of the bringing of said action and at the time of said alleged service on said Federal Life Insurance Company it was not doing business in Tennessee, had not applied for and was not licensed to do business in that State; which offers and each of them were objected to by said Bertha R. Cherry and the objections sustained and to which rulings of the court said Federal Life Insurance Company at the time duly excepted; that on the trial of said cause in said Superior Court your petitioner, Chicago Life Insurance Company, offered to prove by a duly qualified witness that at the time of the bringing of said suit in said Chester County it was not licensed to do or transact any insurance business in the State of Tennessee; that it had not authorized the insurance commissioner or anyone else in that state to acknowledge or receive service in its behalf and that at said times it was not doing business in the State of Tennessee; to each of which offers said Bertha R. Cherry objected and the court sustained each of said objections, to which rulings of the court said Chicago Life Insurance Company then and there duly excepted.

IX.

When the said cause was reached for hearing in the Supreme Court of the State of Illinois that court held that the appeal should have been to the Appellate Court of Illinois for the First District and all papers, together with briefs, were ordered sent to the said Appellate Court and same was done and the cause went on the docket of said Appellate Court and the briefs which had been filed in said appeal in said Supreme Court were directed to be considered as the briefs in said cause in said Appellate Court.

Each of your petitioners filed separate assignments of error in said cause in said Appellate Court and among the errors so assigned by your petitioner, Federal Life Insurance Company, were the following:

"Because the Circuit Court of Chester County, Tennessee, did not have jurisdiction of this appellant and its judgment was and is a nullity and void.

Because the Court of Civil Appeals of the State of Tennessee did

not have jurisdiction of this appellant and its judgment was and is a nullity and void.

Because the Supreme Court of the State of Tennessee did not have jurisdiction of this appellant and its judgment was and is a nullity and void.

238 Each of said judgments in said Circuit Court, Court of Civil Appeals and the Supreme Court of the State of Tennessee and the judgment rendered in the Superior Court was rendered without due process of law and in violation of the constitutions of the State of Illinois and of the United States.

Because this appellant at the time said action was brought in the Circuit Court of Tennessee and at the time of the alleged service upon it was not doing or transacting business in the State of Tennessee and had no agent within the State of Tennessee upon whom service could be had.

Because each of said judgments of said Tennessee courts and the judgment in the Superior Court of Cook County, Illinois, deprived this appellant of its rights and of its property without due process of law.

Because the court erred in refusing to allow this appellant to prove additional facts showing that neither of said Tennessee courts had jurisdiction to render a judgment against this appellant.

Because the court erred in refusing to allow this appellant to prove facts showing that at the time said suit was brought in the Circuit Court of Chester County, Tennessee, and at the time of the alleged service of summons upon this appellant it was not doing or transacting business in the State of Tennessee and did not have an agent in Tennessee who was authorized to represent this appellant and upon whom service could be made and the statute of the State of Tennessee under which said service was had was unconstitutional and contrary to the laws of the United States.

Because the court erred in holding that the judgment of the Court of Civil Appeals of the State of Tennessee was res adjudicata.

Because the court erred in overruling appellant's motion for a new trial and this appellant's motion in arrest of judgment."

The same errors were assigned in said Appellate Court by your petitioner, Chicago Life Insurance Company.

X.

On December 21, 1914, the said Appellate Court affirmed in all things the judgment of said Superior Court of Cook County in said cause. Thereafter and on January 4, 1915, your petitioners filed in said cause in said Appellate Court their petition for rehearing which was denied by said Appellate Court. On January 11, 1915, your petitioners filed in said cause in said Appellate Court their petition for a certificate of importance and appeal both of which were denied by said Appellate Court.

XI.

On or about March 16, 1915, your petitioners filed in the Supreme Court of Illinois their petition for a writ of certiorari and in this petition for writ of certiorari are set forth, among other causes and grounds therefor, the causes and grounds shown hereinabove that were set forth in the motions for a new trial and in the motions in arrest of judgment filed by your petitioners separately in the said Superior Court of Cook County and also set forth in the assignments of error in said Appellate Court of Illinois by your petitioners;
239 also that they insisted that neither of said papers so filed with said declaration in said Superior Court of Cook County, Illinois was entitled to full faith and credit under said Section 1 of Article IV of the Constitution of the United States and under said statute of the United States. In said petition for writ of certiorari filed by your petitioners in the Supreme Court of Illinois it was further set forth that the filing of the pleas in abatement by your petitioners in the said Circuit Court of said Chester County, Tennessee was for the sole purpose of challenging the jurisdiction of that Court over your petitioners and each of them; that in suing out said writs of error from the Court of Civil Appeals of Tennessee and in filing petition in the Supreme Court of Tennessee for a writ of certiorari the same was done by your petitioners solely for the purpose of having said Court of Civil Appeals and said Supreme Court review the question of jurisdiction of the Circuit Court of said Chester County, Tennessee, over your petitioners or either of them.

That on or about April 21, 1915, the Supreme Court of Illinois denied the petition of your petitioners for a writ of certiorari.

XII.

Your petitioners further allege that neither of said Tennessee Courts had jurisdiction over either of your petitioners; that in their motions for a new trial and in arrest of judgment in said cause in said Superior Court of Cook County, in the assignments of error in said Appellate Court of Illinois and in said petition filed by them in the Supreme Court of Illinois for a writ of certiorari they averred, claimed and insisted that neither of said Tennessee courts had jurisdiction over the person of either of your petitioners; that said judgments of said Tennessee courts and each of them were null and void; that said judgments of said Tennessee Courts and each of theme were rendered without due process of law and in violation of the constitutions of the state of Illinois and of the United States, and that each of said judgments of said Tennessee Courts deprived each of your petitioners of rights and property without due process of law.

240 ## XIII.

Your petitioners further aver that neither of them was transacting business in the State of Tennessee at the time of the bringing of

said action in the Circuit Court of Chester County, Tennessee, nor at the time of the alleged service of process upon each of your petitioners, nor during the time of the pendency of the proceedings for writs of error in the said Court of Civil Appeals of Tennessee, nor at the time of the rendition of the judgment by that court nor at the time of the filing by them of a petition in the Supreme Court of Tennessee for a writ of certiorari nor at the time of the rendering of the decision and judgment of said Supreme Court of Tennessee. Your petitioners further aver that there is no evidence in the record in said cause in said Superior Court of Cook County nor in the record in said Appellate Court for the First District of Illinois showing or tending to show that your petitioners or either of them were transacting business in the State of Tennessee at either of the times hereinabove mentioned in this paragraph.

Your petitioners further aver that the question as to whether or not each of said Tennessee courts had jurisdiction over them or either of them is a question of general law and not one of local law.

Your petitioners further allege that on the trial of said cause in said Superior Court of Cook County, in said Appellate Court of Illinois and in their petition to the Supreme Court of Illinois for a writ of certiorari they and each of them insisted that the findings, orders and judgments of each of said Tennessee courts was not res adjudicata; that your petitioners were not estopped by reason thereof from attacking said judgments; that your petitioners and each of them should have been permitted to attack each of said judgments of said Tennessee courts and should have been permitted to introduce evidence showing that neither of said Tennessee courts had jurisdiction over your petitioners or either of them and that neither of said Tennessee courts had jurisdiction over your petitioners or either of them.

Your petitioners aver that each of the decisions and judgments of said courts of Tennessee and Illinois denied to your petitioners rights, privileges and immunity held by your petitioners
241 under the constitution and statutes of the United States and that each of said decisions and judgments was rendered without due process of law and in violation of and contrary to the provisions of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States and that the said papers filed with the declaration of said Bertha R. Cherry in the Superior Court of Cook County, Illinois, were not such papers as were entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States nor was said exemplified record which was Exhibit 1 of said Bertha R. Cherry in said cause in said Superior Court of Cook County such a record as was entitled to full faith and credit under said Section 1 of Article IV of the Constitution of the United States nor were said papers so filed with said declaration nor said exemplified record, Exhibit 1, entitled to full faith and credit under and by virtue of the provisions of Section 905 of the Compiled Statutes of the United States, 1901, Volume 1, page 677.

Wherefore your petitioners pray that a writ of error may issue and that they may be allowed to bring up for review before the Supreme Court of the United States the said proceedings, records, orders and judgments of said Appellate Court for the First District of Illinois and that your petitioners may have such other and further relief in the premises as may be just; and your petitioners will ever pray, etc.

CHICAGO LIFE INSURANCE COMPANY,
FEDERAL LIFE INSURANCE COMPANY,
Petitioners.

By CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Petitioners, Chicago, Illinois.

CHARLES J. O'CONNOR,
Of Counsel for Petitioners, Chicago, Illinois.

242 STATE OF ILLINOIS,
County of Cook, ss:

C. A. Atkinson, being first duly sworn, according to law, deposes and says that he is one of the attorneys for the petitioners hereinabove named, duly authorized in the premises; that the facts set forth in the foregoing petition are true and that he believes the other matters set forth in said petition to be true.

CHARLES A. ATKINSON.

Subscribed and sworn to before me this 17th day of May, A. D. 1915.

[Seal of Albert H. Laub, Notary Public. Cook Co., Ill.]

ALBERT H. LAUB,
Notary Public.

My commission expires Aug. 21, 1918.

243 [Endorsed:] In the Supreme Court of the United States. Chicago Life Insurance Company and Federal Life Insurance Company vs. Bertha R. Cherry. Petition for Writ of Error. Charles A. Atkinson, Chilton P. Wilson, Att'ys for Petitioners, Chicago, Illinois. Charles J. O'Connor, of Counsel for Petitioner, Chicago, Illinois. Appellate Court. Filed May 22, 1915. James S. McInerney, Clerk.

244 CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Plaintiffs in Error,
against
BERTHA R. CHERRY, Defendant in Error.

Petition for Reversal.

To the Honorable the Supreme Court of the United States:

Now come the Chicago Life Insurance Company and the Federal Life Insurance Company, corporations organized under the laws

of the State of Illinois, and domiciled in said State, plaintiffs in error, and pray for a reversal of the order of judgment of affirmance by the Appellate Court for the First District in the State of Illinois on or about December 21, 1914, in the case of said Bertha R. Cherry against said Chicago Life Insurance Company and said Federal Life Insurance Company, which case in said Appellate Court was appealed by said Companies from a judgment rendered by the Superior Court of Cook County, Illinois, on or about November 24, 1913, in a case wherein said Bertha R. Cherry was plaintiff and the Chicago Life Insurance Company and the Federal Life Insurance Company were defendants, and also prays a reversal of said judgment of said Superior Court which was a joint and several judgment against said companies and in favor of said Bertha R. Cherry.

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Said Plaintiffs in Error, Chicago, Illinois.

CHARLES J. O'CONNOR,
Of Counsel for Plaintiffs in Error, Chicago, Illinois.

245 [Endorsed:] In the Supreme Court of United States. Chicago Life Insurance Company and Federal Life Insurance Company, vs. Bertha R. Cherry. Petition for Reversal. Charles A. Atkinson, Chilton P. Wilson, Att'ys for Plaintiffs in Error, Chicago, Ill. Charles J. O'Connor, Of Counsel for Plaintiffs in Error, Chicago, Ill. Appellate Court. Filed May 22, 1915. James S. McInerney, Clerk.

246 Know all men by these presents, that we, The Chicago Life Insurance Company and the Federal Life Insurance Company, as principal, and The National Surety Company, as surety, are held and firmly bound unto Bertha R. Cherry in the full and just sum of Four thousand five hundred ($4,500.00) dollars, to be paid to the said Bertha R. Cherry certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twentieth day of May, in the year of our Lord one thousand nine hundred and fifteen.

Whereas, lately at an Appellate Court for the First District of Illinois in a suit depending in said Court, between Chicago Life Insurance Company and The Federal Life Insurance Company, appellants, and Bertha R. Cherry, appellee, a *a* decree was rendered against the said The Chicago Life Insurance Company and the Federal Life Insurance Company, and the said The Chicago Life Insurance Company and the Federal Life Insurance Company having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Bertha R. Cherry citing and admonishing her to be and appear at a Supreme Court

of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, that if the said The Chicago Life Insurance Company and the Federal Life Insurance Company shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) CHICAGO LIFE INS. CO. AND
FEDERAL LIFE INS. CO., [SEAL.]
By C. A. ATKINSON, [SEAL.]
Their Attorney.

(Signed) NATIONAL SURETY CO., [SEAL.]
By W. H. RONSAVILLE, [SEAL.]
Attorney-in-Fact.

Sealed and delivered in presence of:
(Signed) BLANCHE M. SIPLE.
(Signed) CHAS. T. CHAPMAN.

Approved by:
(Signed) J. C. McREYNOLDS,
Associate Justice of the Supreme Court of the United States.

To operate as a supersedeas.

247 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America, to the Honorable the Judges of the Appellate Court for the First District of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Appellate Court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Chicago Life Insurance Company and The Federal Life Insurance Company, appellants, and Bertha R. Cherry, appellee, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein any title, right, privilege, or immunity was claimed under the Constitution, or any treaty or statute of,
248 or commission held or authority exercised under, the United States, and the decision was against the title, right, privilege, or immunity especially set up or claimed under such Constitution, treaty, statute commission, or authority; a manifest error hath happened to the great damage of the said Chicago Life Insurance

Company and The Federal Life Insurance Company, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twentieth day of May, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

Allowed by
J. C. McREYNOLDS,
Associate Justice of the Supreme Court of the United States.

[Endorsed:] Supreme Court of the United States, October Term, 191-. —— vs. ——. Writ of Error. Appellate Court. Filed May 22, 1915. James S. McInerney, Clerk.

249 UNITED STATES OF AMERICA,
Appellate Court, First District, Illinois, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within case, as per certain præcipes filed in my office, together with all things concerning the same.

In testimony whereof I have set my hand and affixed the seal of the said Appellate Court at Chicago, this 14th day of June in the year of our Lord One Thousand Nine Hundred and Fifteen.

JAS. S. McINERNEY,
Clerk of the Appellate Court,
First District, Illinois.

250 STATE OF ILLINOIS,
Appellate Court, First District, ss:

I, James S. McInerney, Clerk of the Appellate Court First District, Illinois, do hereby certify that there was lodged with me as such Clerk on May 22, A. D. 1915, in the matter of Bertha R. Cherry vs. Chicago Life Insurance Company et al., the original bond, of which a copy is herein set forth; also a certain Writ of Error from the Supreme Court of the United States, which said Writ of Error is hereto attached.

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In testimony whereof I have set my hand and affixed the seal of the said Appellate Court, at Chicago, this 14th day of June in the year of our Lord one thousand nine hundred and fifteen.

JAS. S. McINERNEY,
Clerk of the Appellate Court,
First District, Illinois.

251 UNITED STATES OF AMERICA, *ss:*

To Bertha R. Cherry, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Appellate Court for the First District of Illinois, wherein Chicago Life Insurance Company and The Federal Life Insurance Company are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable James C. McReynolds, Associate Justice of the Supreme Court of the United States, this twentieth day of May, in the year of our Lord one thousand nine hundred and fifteen.

J. C. McREYNOLDS,
Associate Justice of the Supreme Court
of the United States.

252 STATE OF ILLINOIS,
County of Cook, ss:

On this 24th day of May, in the year of our Lord one thousand nine hundred and Fifteen, personally appeared before me, the subscriber, Alex M. Golman and makes oath that he delivered a true copy of the within citation to Atwood, Pease & Loucks, attorneys for Bertha R. Cherry.

ALEX M. GOLMAN.

Sworn to and subscribed the 24th day of May, A. D. 1915.

[Seal Edward C. Kesler, Notary Public, Cook Co., Ill.]

EDWARD C. KESLER,
Notary Public.

Appellate Court. Filed Jun- 14, 1915. James S. McInerney, Clerk.

253 In the Supreme Court of United States.

CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY, Plaintiffs in Error,
vs.
BERTHA R. CHERRY, Defendant in Error.

Statement of Errors, etc., by Plaintiffs in Error.

Now come the said plaintiffs in error and say that they intend to rely upon the following errors in the record, proceedings and judgment of the Appellate Court for the First District of Illinois and in the Superior Court of Cook County, Illinois, to-wit:

1. Because at the time of the bringing of the action in the Circuit Court of Chester County, Tennessee, and at the time of the alleged service upon plaintiffs in error and each of them they were foreign corporations, not transacting business in the State of Tennessee; there was no legal service of process upon either of them; neither of said Tennessee Courts had jurisdiction over plaintiffs in error or either of them; the judgment of each of said Tennessee Courts was and is null and void because rendered without due process of law; the action brought in the Superior Court of Cook County upon said judgments was brought upon judgments which were and are void and of no effect and therefore the judgment of said Superior Court of Cook County, Illinois, and the judgment of affirmance by the Appellate Court for the First District of Illinois were and are contrary to the provisions of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States and of Section 1 of Article IV of the Constitution of the United States.

2. Because each of said judgments of said Tennessee Courts, the judgment of said Superior Court of Cook County, Illinois, and the order and judgment of affirmance thereof by the Appellate Court for the First District of Illinois deprived said plaintiffs
254 in error and each of them of their rights and property without due process of law contrary to Section 1 of Article XIV of the Amendments to the Constitution of the United States and of Article V of the Amendments to the Constitution of the United States.

3. Because said Superior Court of Cook County, Illinois, erroneously found and adjudged that neither of plaintiffs in error had the right to introduce evidence on the trial of the cause in said Superior Court showing that neither of said Tennessee Courts had jurisdiction of plaintiffs in error or either of them and said Appellate Court for the First District of Illinois erroneously affirmed said finding and judgment of said Superior Court, all of which was and is in violation of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States and of Section 1 of Article IV of the Constitution of the United States.

4. Because said Superior Court of Cook County, Illinois, erroneously held and adjudged that plaintiffs in error were barred by Section 1 of Article IV of the Constitution of the United States from introducing evidence on the trial of the cause in said Superior Court showing that neither of said Tennessee Courts had jurisdiction of plaintiffs in error or either of them, and said Appellate Court for the First District of Illinois erroneously affirmed said finding and judgment of said Superior Court, all of which was and is in violation of Article V of the Amendments to the Constitution of the United States, of Section 1 of Article XIV of the Amendments to the Constitution of the United States and of Section 1 of Article IV of the Constitution of the United States.

5. Because neither of the papers filed with the declaration of defendant in error in the said Superior Court of Cook County, Illinois, was entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States; and the judgment of said Superior Court of Cook County, Illinois, that each of said papers was entitled to full faith and credit and the judgment of affirmance thereof by the said Appellate Court for the First District of Illinois were and are contrary to and in violation of the provisions of said Section 1 of Article IV of the Constitution of the United States and contrary to Section 905 of the Compiled Statutes of the United States, 1901, Volume 1 page 677.

255 6. Because the holding and judgment of said Superior Court of Cook County, Illinois, that the proceedings and judgment of each of said Tennessee Courts was res adjudicata and the order and judgment of affirmance thereof by the said Appellate Court for the First District of Illinois were and are contrary to and in violation of the provisions of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

7. Because the findings and judgment of said Superior Court of Cook County, Illinois, that plaintiffs in error could not attack collaterally each and all of the judgments of said Tennessee Courts and the order and judgment of affirmance thereof by said Appellate Court for the First District of Illinois were and are contrary to the provisions of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States and of Section 1 of Article IV of the Constitution of the United States for the reason that neither of said Tennessee Courts had jurisdiction by due and legal service of process over either of plaintiffs in error.

8. Because each of said judgments of said Tennessee Courts and the judgment of said Superior Court of Cook County, Illinois, and the order and judgment of affirmance by said Appellate Court for the First District of Illinois, deprived each of plaintiffs in error of its rights and of its property without due process of law, contrary to and in violation of Article V of the Amendments to the Constitution of the United States and of Section 1 of Article XIV of the Amendments to the Constitution of the United States.

9. Because the said Circuit Court of Chester County, Tennessee, did not have jurisdiction over either of plaintiffs in error and its judgment was and is a nullity and void and each of plaintiffs in error had the right to attack said judgment collaterally in said action in said Superior Court of Cook County, Illinois, and in said Appellate Court for the First District of Illinois under the provisions of Sections 1 and 2 of Article IV of the Constitution of the United States, Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

256 10. Because the said Court of Civil Appeals of Tennessee did not have jurisdiction over either of plaintiffs in error and its judgment was and is a nullity and void and each of plaintiffs in error had the right to attack said judgment collaterally in said action in said Superior Court of Cook County, Illinois, and in said Appellate Court for the First District of Illinois under the provisions of Sections 1 and 2 of Article IV of the Constitution of the United States, Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

11. Because the said Supreme Court of Tennessee of the State of Tennessee did not have jurisdiction over either of plaintiffs in error and its judgment was and is a nullity and void and each of plaintiffs in error had the right to attack said judgment collaterally in said action in said Superior Court of Cook County, Illinois, and in said Appellate Court for the First District of Illinois under the provisions of Sections 1 and 2 of Article IV of the Constitution of the United States, Article V of the Amendments to the Constitution of the United States, and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

12. Because neither of plaintiffs in error was doing business in the State of Tennessee at the time of the bringing of said action in said Circuit Court of Chester County, nor at the time of the alleged service upon each of them and there was no due and legal service of process upon either of plaintiffs in error in said action in said Circuit Court of Chester County, Tennessee, and said Circuit Court of Chester County did not have jurisdiction over either of plaintiffs in error in said action and the judgment rendered against said plaintiffs in error and each of them in said Circuit Court of Chester County, Tennessee, was without due process of law and contrary to and in violation of Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

13. Because at the time of the bringing of said action in said Circuit Court of Chester County, Tennessee, and at the time of the alleged service of process neither of plaintiffs in error had any agent in the State of Tennessee and neither of said plaintiffs in error at said times had an agent in the State of Tennessee upon whom due and legal service of process could be made, and therefore said judgment of said Circuit Court of Chester County, Tennessee,

257 was and is null and void and of no effect, no appearance having been entered in said cause in said Circuit Court of Chester

County by either of plaintiffs in error, and contrary to and in violation of the provisions of Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

14. Because the said Superior Court of Cook County, Illinois, erred in refusing to allow plaintiffs in error or either of them to prove facts showing that at the time said suit was brought in said Circuit Court of Chester County, Tennessee, and at the time of the alleged service of summons upon said plaintiffs in error neither of them was doing and transacting business in the State of Tennessee and did not have any agent in Tennessee who was authorized to represent them or either of them and upon whom legal service of process could be made, which refusal, holding and judgment of said Superior Court of Cook County, Illinois, and the order and judgment of affirmance thereof by the said Appellate Court for the First District of Illinois were and are contrary to and in violation of the provisions of Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

15. Because the statutes of Tennessee under which service of process upon plaintiff in error, Federal Life Insurance Company, was attempted to be had in said action in said Circuit Court of Chester County, Tennessee, to-wit, Sections 4545 and 4546 of Shannon's Code of the State of Tennessee, are unconstitutional and contrary to and in violation of Article V of the Amendments to the Constitution of the United States and Section 1 of Article XIV of the Amendments to the Constitution of the United States.

16. For that there are divers other errors, insufficiencies and uncertainties in said record, proceedings and judgments.

Plaintiffs in error say that the following parts of the record are necessary for the consideration of said errors and should be printed, to-wit:

Placita.

Declaration of defendant in error against plaintiffs in error and papers filed therewith called "Copy of Instrument Sued on."

258 Pleas of Federal Life Insurance Company.

Pleas of Chicago Life Insurance Company.

Replication of defendant in error to first plea of Chicago Life Insurance Company.

Replication of defendant in error to third plea of Chicago Life Insurance Company.

Replication of defendant in error to first plea of Federal Life Insurance Company.

Replication of defendant in error to third plea of Federal Life Insurance Company.

Amended replication of defendant in error to second plea of Chicago Life Insurance Company.

Amended replication of defendant in error to second plea of Federal Life Insurance Company.

Rejoinder of Federal Life Insurance Company to amend replication of defendant in error to its second plea.

Rejoinder of Chicago Life Insurance Company to amend replication of defendant in error to its second plea.

Statement of proceedings in the Court on the 24th day of November, 1913.

That part of the Bill of Exceptions of the Superior Court of Cook County, Illinois, relating to the offer in evidence of plaintiff's Exhibit 1 and the objections thereto on pages 69 to 80 inclusive of the certified copy of the record of the Appellate Court.

That part of the Bill of Exceptions of the Circuit Court of Chester County, Tennessee, appearing on pages 103 and 104 of the certified copy of the record of the Appellate Court for the First District of Illinois.

Motion on behalf of Federal Life Insurance Company and concurrence of Chicago Life Insurance Company at the close of case of defendant in error to find the issues for plaintiff in error, and exceptions to the denial thereof.

259 Motion of Federal Life Insurance Company for peremptory instruction; denial of motion and exceptions.

Motion of Chicago Life Insurance Company for peremptory instruction; denial of motion and exceptions.

Testimony of Charles A. Atkinson; rulings of the court thereon and exception; offer to prove further facts and ruling as to such offer.

Testimony of Samuel G. Hamblen; rulings of the court thereon and exceptions; offer to prove further facts and rulings as to such offer.

Proceedings of the court at the close of the evidence for plaintiffs in error, pages 161 to 166 inclusive of the certified copy of the record of the Appellate Court for the First District of Illinois.

The following grounds for motion of the Federal Life Insurance Company for a new trial, to-wit: 9, 16 to 24 inclusive.

The following grounds for motion of Chicago Life Insurance Company for a new trial, to-wit: 8, 9, 17 to 25 inclusive.

The following grounds for motion of Federal Life Insurance Company in arrest of judgment, to-wit, 7 to 15 inclusive.

The following grounds for motion of Chicago Life Insurance Company in arrest of judgment, to-wit: 7 to 15 inclusive.

Denial of said motions; judgment on verdict; exceptions, being all on page 180 of the certified copy of the record of the Appellate Court for the First District of Illinois.

The following assignments of error in said Appellate Court by Chicago Life Insurance Company, to-wit: 5, 8, 9, 15 to 24 inclusive, together with prayer at the end of said assignments of error.

The following assignments of error in said Appellate Court by Federal Life Insurance Company, to-wit: 5, 8, 9, 15 to 24 inclusive, together with prayer at the end of said assignments of error.

Judgment of said Appellate Court for the First District of Illinois.

Denial of petition for rehearing of Chicago Life Insurance Company and Federal Life Insurance Company.

260 Denial of petition of said Companies for certificate of importance and appeal to the Supreme Court of Illinois.

Record of proceedings in the Supreme Court of Illinois.

Opinion of said Appellate Court.

Bond given by plaintiffs in error on allowance of writ of error by Supreme Court of the United States to said Appellate Court.

Præcipe filed by plaintiffs in error with the Clerk of the Appellate Court for the first District of Illinois for transcript of certain parts of the record in that Court.

Præcipe of defendant in error filed with the Clerk of said Appellate Court for transcript of the entire record in that Court.

Petition of plaintiffs in error for writ of error from Supreme Court of the United States to said Appellate Court for the First District of Illinois; allowance thereof; writ of error; petition of said plaintiffs in error for reversal of the judgments of said Appellate Court and the Superior Court of Cook County, Illinois; affidavit of service of writ of error upon defendant in error and return by Clerk of said Appellate Court.

Assignments of error by plaintiffs in error in this Court.

Respectfully submitted,

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Plaintiffs in Error.

CHARLES J. O'CONNOR,
Of Counsel for Plaintiffs in Error.

Received a copy of the above statement of errors and designation by plaintiffs in error of portions of the record to be printed this 11th day of September, 1915.

____ ____,
Attorneys for Defendant in Error.

STATE OF ILLINOIS,
County of Cook, ss:

Alex Golman on oath deposes and says that he served the above statement of errors, etc. by leaving a true copy thereof with Charles O. Loucks, a member of the firm of Atwood, Pease & Loucks, this 11th day of September, 1915.

ALEX GOLMAN.

Subscribed and sworn to before me this 11th day of September, 1915.

[Seal Alfar M. Eberhardt, Notary Public, Cook County, Illinois.]

ALFAR M. EBERHARDT,
Notary Public.

261 [Endorsed:] No. 1059. 520, '15/24803. Supreme Court United States. Chicago Life Insurance Company, and Federal Life Insurance Company vs. Bertha R. Cherry. Statement of Errors, etc., by Plaintiffs in Error. Charles A. Atkinson, Chilton

P. Wilson, Att'ys for Pl't'fs in Error. Charles J. O'Connor, of Counsel for Pl't'fs in Error.

262 [Endorsed:] File No. 24803. Supreme Court U. S., October term, 1915. Term No. 520. Chicago Life Insurance Company et al., pl'ffs in error, vs. Bertha R. Cherry. Statement of errors and designation by plaintiffs in error of parts of record to be printed. Filed September 13, 1915.

263 In the Supreme Court of the United States.

No. 520.

CHICAGO LIFE INSURANCE COMPANY, a Corporation, and FEDERAL LIFE INSURANCE COMPANY, a Corporation, Plaintiffs in Error,
vs.
BERTHA R. CHERRY, Defendant in Error.

Now comes the defendant in error in the above entitled cause and says that it is necessary for the consideration of the errors alleged by plaintiffs in error that the entire record heretofore filed in the above entitled cause be printed, and requests that the clerk of said court have printed, in addition to the parts of the record requested by plaintiffs in error, all other parts of the record not specified in the statement of plaintiffs in error.

FRED H. ATWOOD,
CHARLES O. LOUCKS,
VERNON R. LOUCKS,
Attorneys for Defendant in Error.

264 [Endorsed:] No. 520. 520/24803. Supreme Court of the United States. Chicago Life Insurance Company, a corporation, and Federal Life Insurance Company, a corporation, Plaintiffs in error, vs. Bertha R. Cherry, Defendant in error. Atwood, Pease & Loucks, Attorneys for defendant in error.

265 [Endorsed:] File No. 24803. Supreme Court U. S., October term, 1915. Term No. 520. Chicago Life Insurance Company et al., Pl'ffs in Error, vs. Bertha R. Cherry. Designation by defendant in error of additional parts of record to be printed. Filed September 30, 1915.

Endorsed on cover: File No. 24,803. Illinois Appellate Court, First District. Term No. 171. Chicago Life Insurance Company and The Federal Life Insurance Company, plaintiffs in error, vs. Bertha R. Cherry. Fied June 17th, 1915. File No. 24,803.

SUPREME COURT, U. S.
FILED
JAN 16 1917
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1916.

No. 171.

CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY,
Plaintiffs in Error.

vs.

BERTHA R. CHERRY,
Defendant in Error.

Error to the Appellate Court for the First District of the State of Illinois.

Reply Brief and Argument for Plaintiffs in Error.

CHARLES A. ATKINSON,
CHILTON P. WILSON,
Attorneys for Plaintiffs in Error.
CHARLES J. O'CONNOR,
Of Counsel.

CHAMPLIN LAW PRINTING CO.

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1 Black on Judgments, Sec. 275 7

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Sherry v. Divine, 58 Tenn. 722, 725 ..... 7, 16
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1916.

No. 171.

CHICAGO LIFE INSURANCE COMPANY and FEDERAL LIFE INSURANCE COMPANY,
Plaintiffs in Error.

vs.

BERTHA R. CHERRY,
Defendant in Error.

Error to the Appellate Court for the First District of the State of Illinois.

Reply Brief and Argument for Plaintiffs in Error.

First. Counsel for defendant in error in her brief on pages 8 and 9 discuss the first point in brief of plaintiffs in error on pages 26, 27 and 28. In our opinion counsel have failed entirely to comprehend the position of plaintiffs in error on the proposition involved in their first point. They are not contending that this court should construe an Illinois statute.

Unquestionably defendant in error relied upon the Illinois courts giving full faith and credit to

the Tennessee judgments under the constitution and laws of the United States. The papers filed with the declaration in the Superior Court of Cook County were not authenticated in any manner and do not purport to be the record or even a substantial part of the record of either of said judgments in said Tennessee courts. Whether or not full faith and credit is to be given to a judgment of a court in one state by the court of another state depends primarily upon what is shown in the record of the case in which the judgment was rendered.

To illustrate: If this entire record should show that the court rendering the judgment did not have jurisdiction of the parties, then such judgment would not be entitled to full faith and credit under the constitution and laws of United States.

It seems to us that it is not within the province of the pleader in an action upon a judgment of a sister state to pick out or select such parts of the record and proceedings and file copies of such parts and then claim that the same are entitled to full faith and credit and ask the court to assume that the balance of the record will show the judgment to be entitled to full faith and credit.

The statutes of the State of Illinois require a plaintiff to file a copy of the instrument sued on with his declaration. In attempting to comply with this statute defendant in error filed the three papers above mentioned.

Defendant in error cannot arbitrarily say what is sued upon for the purpose of limiting what should be filed with the declaration. She has relied upon

the entire record and the judicial proceedings of the Tennessee courts in her pleadings. Her amended replication sets up the process issued, the alleged service of such process, the pleas filed by plaintiffs in error in the Circuit Court of Chester county and all of the record as to what took place before judgment and substantially the same record as that offered in evidence in the final proof.

If a copy of the record and judicial proceedings themselves is filed it might be determined from the process or alleged service of process in the Tennessee courts that those courts did not have jurisdiction of the person and the allegations in the plaintiff's declaration that it was a suit upon a judgment that could be enforced and was entitled to full faith and credit could be refuted by a proper plea denying the jurisdiction of the Tennessee courts.

Section 1 of article IV of the constitution provides that full faith and credit shall be given in every state to the public acts, records and judicial proceedings of every other state, etc. As defendant in error was required under the laws of the State of Illinois to file a copy of the instrument sued on unless that copy is a copy of the record and judicial proceedings of the Tennessee courts or substantially so in which it is alleged that judgments were obtained, then the same would not be entitled to full faith and credit under the constitution.

Plaintiffs in error insist that the papers filed by defendant in error with her declaration in said Superior Court were not such papers as showed

there was any judgment in the Tennessee courts which was entitled to this full faith and credit.

Under the constitution of the United States only the record and judicial proceedings of the court in which judgment has been obtained are entitled to full faith and credit. There is nothing in these provisions of the constitution which authorize any court to give full faith and credit to a part of the record and judicial proceedings of the courts of another state. Neither the constitution nor the Act of Congress provides for a portion to be sued on and a whole to be proven in the suit.

Second: Defendant in error in her brief contends that no federal question is involved in this case.

There are at least two federal questions involved:

(1) Whether or not the papers filed in the Superior Court of Cook county with the declaration of defendant in error were such papers as showed that the judgments of the Tennessee courts which were sued on were entitled to full faith and credit under the provisions of section 1 of article IV of the Constitution of the United States.

The statutes of Illinois require defendant in error to file with her declaration a copy of the instrument sued on. In attempting to comply with these requirements defendant in error filed certain papers with her declaration. Do these papers show that the judgment or judgments of the Tennessee courts were entitled to full faith and credit under the provisions of said section 1 of the Constitution without the court presuming that the other portions of the record and proceedings show due process of law?

Is the court required or authorized so to presume, when the record speaks for itself, if filed? Clearly a federal question is involved.

(2) Another federal question is involved as to whether or not there was due process of law in obtaining the judgments in the Tennessee courts.

It will be noticed that defendant in error in her brief declines to discuss the question whether or not there was legal service of process upon either of plaintiffs in error in the action in said Circuit Court of Chester county.

The cases cited by defendant in error in her brief in support of her proposition that no federal question is involved do not show that no federal question is involved in the instant case.

For instance, the case of *Lynne* v. *Lynne*, 181 U. S. 183, was a case where originally an action was brought in New York on a decree for alimony. The validity of this decree was brought into question. In deciding this case this court said:

> "The *husband having appeared* and been heard in the proceeding for alimony, there is no color for his present contention that he was deprived of his property without due process of law. Nor does he appear to have made any such contention in the courts of the state. His writ of error, therefore, must be dismissed." (Italics are ours.)

Plaintiffs in error both in the Superior Court of Cook county and the Appellate Court of Illinois insisted upon these federal questions and they were called to the attention of said courts and the decisions of those courts were against the rights claimed by plaintiffs in error.

Said courts in holding that the papers filed by defendant in error with her declaration in the said Superior Court showed that the judgment or judgments of the Tennessee courts were entitled to full faith and credit and in holding that *res adjudicata* applied and that plaintiffs in error were estopped from questioning the jurisdiction of the Tennessee courts decided against the rights of plaintiffs in error.

POINTS AND AUTHORITIES.

I.

See authorities cited on pages 26, 27 and 28, brief of plaintiffs in error.

II.

Whether the Tennessee courts had jurisdiction over plaintiffs in error is open to inquiry when the judgments of those courts are sued upon in another state. The doctrine of *res adjudicata* does not apply.

Tilt v. *Kelsey*, 207 U. S. 43, 59.
Thorman v. *Frame*, 176 U. S. 350, 356.
Southern Pacific, etc. v. *Denton*, 146 U. S. 202.
Cooper v. *Newell*, 173 U. S. 555.
Harris v. *Hardeman*, 55 U. S. 333.
National Exchange Bank v. *Wiley*, 195 U. S. 257.

Henning v. *Planters Ins.*, 28 Fed. 440.
Bigelow v. *Stearns*, 19 Johns. 39; 10 Am. Dec. 189.
Gould v. *Glass*, 19 Barb. 179.
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Montgomery v. *Consolidated, etc. Co.*, 103 Am. St. 302 (Ky.).
23 Cyc. 668.
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Rice v. *Travis*, 216 Ill. 249.
Palmer v. *Oakley*, 2 Doug. 453 (Mich.).
Graham v. *O'Bryan*, 120 N. C. 463.
Walling v. *Beers*, 120 Mass. 549.
Fisher Sons & Co. v. *Crowley*, 57 W. Va. 312.

III.

The following authorities are cited particularly in support of the contention of plaintiff in error, Chicago Life Insurance Company, set forth in the brief herein.

New River Mineral Company v. *Seeley*, 120 Fed. 193.
Bennett v. *Supreme Tent of Knights of Maccabees*, 82 Pac. 744.
Also see authorities cited under point II, *supra*.

ARGUMENT.

I.

We have already discussed hereinabove the propositions involved under this point.

II.

The filing of a plea in abatement by the Chicago Life in the Circuit Court of Chester county, Tennessee and the sustaining of the demurrer of defendant in error thereto by that court do not constitute *res adjudicata.*

The fact that the Federal Life filed its plea in abatement, issue made thereon by defendant in error, evidence offered, plea in abatement overruled and decision that said court had jurisdiction do not constitute *res adjudicata.*

No court has power or authority to render judgment against a defendant unless it has legal jurisdiction of that defendant notwithstanding it may adjudicate that it has jurisdiction.

In the case of *Gould* v. *Glass*, 19 Barb. 179, an action was commenced before a justice of the peace and on a plea of title being interposed the cause was transferred to the County Court and there tried. In deciding this case the court said:

> "No court or officer can acquire jurisdiction by the mere assertion of it."

In the case of *Harkness* v. *Hyde*, 98 U. S. 476, the court said:

> "Illegality in a proceeding by which jurisdiction is to be obtained is in no case waived by the appearance of the defendant for the purpose of calling the attention of the court to such irregularity; nor is the objection waived when being urged it is overruled, and the defendant is thereby compelled to answer. He is not considered as abandoning his objection because he does not submit to further proceedings without contestation. It is only where he pleads to the merits in the first instance, without insisting upon the illegality, that the objection is deemed to be waived."

In the case of *in re Eichoff*, 101 Cal. 600, the court said:

> "That the jurisdiction of a court does not exist by virtue of its *mere decision that it has jurisdiction*, as that would be reasoning in a circle." (Italics are ours.)

In that case the court further held that the existence of the jurisdiction antedates its exercise and does not depend upon any subsequent record thereof.

In the case of *Priestman* v. *Priestman*, 103 Ia. 320, the court said:

> "In this case there is an absence of a certain condition precedent to the publication of any notice and the *adjudication of the court* that this preliminary step had been complied with is not binding but is subject to attack in this proceeding." (The italics are ours.)

In the case of *Williamson* v. *Berry*, 49 U. S. 495, cited by plaintiffs in error, page 29 of their brief, the court said:

"But it is an equally well-settled rule in jurisprudence, that the jurisdiction of any court exercising authority over a subject may be inquired into in every other court, when the proceedings in the former are relied upon, and brought before the latter, by a party claiming the benefit of such proceedings. The rule prevails, whether the decree or judgment has been given in a court of admiralty, chancery, ecclesiastical court or court of common law, or whether the point ruled has arisen under the laws of nations, the practice in chancery, or the municipal laws of states."

In that case the court further said:

"The operation of every judgment depends upon the jurisdiction of the court to render it."

In Brown on Jurisdiction (2d Ed.), Sec. 26, pp. 131-2, the author says:

"If the court lacks jurisdiction over the subject-matter of the controversy, all the authorities agree that the judgment is void, however honestly it may believe it is acting rightfully, whatever may be the recitals of its record, *however formal may be its acts or however judicious its conclusions.* If it lacked power to perform the judicial act it undertook, its finding that it had jurisdiction adds nothing to the verity of its pretended judgment. Its power was usurped and its finding that it possessed the power in no way confers it. To render a valid judgment the court rendering it must acquire jurisdiction over the defendant in the action, and all the authorities agree that if it does not, then the judgment is invalid and void, a mere arbitrary edict and entitled to no respect." (Italics ours.)

In the case of *Hard* v. *Shipman*, 6 Barb. 621, the court said:

> "No court or officer can acquire jurisdiction by the mere assertion of it or by falsely alleging the existence of facts upon which the jurisdiction depends. If the court had no jurisdiction it had no power to make a record; and the supposed record is not in truth a record."

In the case of *Lowe* v. *Lowe*, 40 Ia. 220, cited by plaintiffs in error under point II, page 29, of their brief, the court said:

> "It is now the prevailing rule that in actions upon the judgments of a sister state, want of jurisdiction may be shown in the court by proof contradicting the recitals or *adjudications* set out in the record. This court has held that in an action upon a Missouri judgment, which recited an *adjudication* that due service of process had been made, it was competent for the defendant to contradict the record by proof, showing want of service." (Italics are ours.)

In the case of *Newcomb* v. *Dewey*, 27 Ia. 383, there was a decree of foreclosure referred to in the petition and copy annexed thereto. It appeared in this case that the court examined the pleadings, proofs and exhibits on file and produced to the court and being fully advised of the premises *found that all the defendants had been served with due and legal service of the pendency of the suit.*

In deciding this case the Supreme Court of Iowa said:

> "Upon principle, it seems to us the true question is, did the court, in fact, have jurisdiction? not, did the court decide that it had jurisdiction? If it did not, in fact, have jurisdiction, then *its decision is a nullity;*

> *and it matters not what facts it finds, or what questions it decides; unless there was jurisdiction in fact, they are all alike nullities. If without jurisdiction, it may not adjudicate the real merits of the case, neither may it adjudicate any other question whether it be introductory, incidental or collateral.* A judgment becomes a verity, and concludes the parties, because, and only because, the court pronouncing it had jurisdiction so to do. Now, if the court, by its *judgment*, may conclude parties as to its jurisdiction, *it would follow that the judgment would conclusively prove the jurisdiction, and the jurisdiction would conclusively prove the judgment.*" (Italics are ours.)

In the case of *Payson* v. *The People*, 175 Ill. 267, at page 272, the court said:

> "It has never been held where the record itself showed the evidence of jurisdiction upon which the court acted was insufficient that *the finding of the court in favor of its jurisdiction was conclusive.*" (Italics are ours.)

In the case of *Senichka* v. *Lowe*, 74 Ill. 274, at page 276, the court said:

> "It has never been held where the record itself showed the evidence of jurisdiction upon which the court acted was insufficient that *its finding in favor of its jurisdiction was conclusive.*" (Italics are ours.)

In the case of *Klemm* v. *Dewes* 28 Ill. 317, three of the defendants were served with process and the other defendant was not served and default was taken against all of the defendants. Before final judgment was entered on the default the defendants filed a motion to set aside the default and while that motion was pending judgment was rendered.

It was urged in that case that the entry of the motion cured the error of taking a default against defendant not served but who had not entered his appearance. Speaking of the object of the motion to set aside the default the court in that case said:

> "But in this case the object was to get rid of a judgment which was void as to him. How this could give validity to a void judgment we are unable to perceive. To do so, would be to hold that a denial of validity, was to give it force and effect. It would be to reverse all the presumptions arising from human action."

So, in the instant case, defendant in error claims that because plaintiffs in error in said Circuit Court of Chester county filed their pleas in abatement and these pleas were overruled and that the court found it had jurisdiction therefore it had jurisdiction. The effect of this is to hold that where a defendant objects to the jurisdiction of the court and such objection is overruled the jurisdiction is conferred upon the court even though, as a matter of fact, it did not have jurisdiction. It seems to us that this proposition of defendant in error is not sound either in good sense, justice or law.

Defendant in error in her brief on page 11 quotes from *Thompson* v. *Whitman*, 18 Wall. 457, and takes the position in view of this decision that where the judgment sued on contains mere *recitals* that it had jurisdiction, then such judgment might be attacked collaterally for want of jurisdiction in the court rendering the judgment but that where the court rendering the judgment tried the question of its jurisdiction and decided that it had jurisdiction then such judgment is not open to attack collaterally.

We desire in this connection to call attention to the fact that this court in *Thompson* v. *Whitman* case, went further than is admitted by defendant in error, for in that decision this court said:

> "But it must be admitted that no decision has ever been made on the precise point involved in the case before us in which evidence was admitted to contradict the record as to jurisdictional facts asserted therein *and especially as to the facts stated to have been passed upon by the court.*" (Italics are ours.)

Here is more than a reference to mere recitals in the record of the judgment sued on. This court in that case considered the question of collateral attack upon a judgment where the question of jurisdiction had been passed upon by the court rendering the judgment.

Defendant in error in her brief on page 11 refers to II Black on Judgments, Sec. 901, and quotes a part of that paragraph, on page 12 of her brief. There is but one authority cited by the author in support of that part of this section which is quoted by defendant in error and that is the case of *Gleason* v. *Dodd*, 4 Met. 333. An examination of this authority will show that it does not support in any respect that part of said paragraph quoted by defendant in error.

We call attention to the fact that in that case Mr. Chief Justice SHAW, who delivered the opinion of the court, said:

> "As a necessary consequence of this doctrine it followed that it is competent for the defendant sued on such judgment under a proper plea to put in issue every fact necessary to try the question of such jurisdiction."

We call attention to this entire section 901.

The case of *Johnson* v. *Johnson*, 67 How. Pr. 144, quoted from by defendant in error on pages 24 and 25 of her brief, was based evidently upon the authority of the court to determine the status of the persons within the state where the judgment was rendered for in that case the court said:

> "The status of all persons within a state is exclusively for that state to determine for itself."

In the case at bar plaintiffs in error were foreign corporations. Therefore this case in 67 How. Pr. Rep. does not apply.

In the case of *Lumber Company* v. *Lieberman*, 106 Tenn. 150, the court held that the filing of a plea in abatement to the jurisdiction was the entry of appearance simply for the purpose of contesting the jurisdiction and not for a trial on the merits and was not a submission to the jurisdiction.

To the same effect are the cases of *Boone* v. *Rohl*, 1 Heisk. 12 (Tenn.), and *Sherry* v. *Devine*, 58 Tenn. 722.

By filing a plea in abatement a defendant does not submit to the jurisdiction of the court; then how can it be said that by the filing of a plea in abatement and the court passing upon the same, jurisdiction is conferred?

The case of *Chicago Title & Trust Co.* v. *Storage Co.*, 260 Ill. 485, referred to and quoted from on pages 16, 17 and 18 of brief of defendant in error, was one where the original proceeding or action was in bankruptcy. In that proceeding it was ad-

mitted that the United States court had jurisdiction of the parties. Necessarily, therefore, orders, etc., made by that court would be binding upon the parties. In said bankruptcy proceedings no question was raised as to the jurisdiction of the court over the parties. Hence this case in 260 Ill. does not apply to any of the questions involved in the case at bar.

In the case of *Montgomery* v. *Consolidated, etc. Co.*, 103 Am. St. Rep. 302, decided by the Court of Appeals of Kentucky, it was held:

> "The rule to which we have just referred is not restricted to evidence rebutting jurisdictional presumptions. It permits issue to be taken with the record in any case, and its jurisdictional statements, no matter how clear, to be disproved, whether such statement is to be found in a *finding made by the trial court* and inserted in the judgment or some other part of the record." (Italics are ours.)

In support of these propositions the court cited numerous cases decided by this court and by the Supreme Courts of different states.

In this case the court further said:

> "The judgment of a court of another state is as to the question of the jurisdiction of the court over the person of the defendant open to attack to the same extent as a foreign judgment and its effect may always be avoided by disproving such jurisdiction." (Citing numerous cases.)

III.

Defendant in error in her brief, page 24, quotes from the case of *Kinnier* v. *Kinnier*, 45 N. Y. Rep. 535. In this case as shown by said quotation that court held that "the status of all persons within a state is exclusively for that state to determine for itself."

In this case the court refers to the case of *Dobson* v. *Pearce*, 12 N. Y. 156, and says that it was there held "that the record of a judgment of a sister state, *when the parties appeared*, is conclusive in this state as to the subject-matter of the action, and as to all questions litigated."

We submit these cases have no application to any of the questions here involved. There was no general appearance of plaintiffs in error in the said Circuit Court of Chester county and as held by the Tennessee courts and shown by other decisions cited by plaintiffs in error, the filing of a plea in abatement is not the entry of a general appearance so as to give the court jurisdiction.

In the 12 N. Y. case, cited by defendant in error on page 6 of her brief, the court said:

> "The jurisdiction of the court in which a judgment has been recovered, is, however, always open to inquiry; and if it has exceeded its jurisdiction, or has not acquired jurisdiction of the parties by the due service of process or by a voluntary appearance, the proceedings are *coram non judice* and the judgment void. The want of jurisdiction has always been held to be a valid defense to an action upon the judgment and a good answer to it when set up for any purpose."

On pages 14 and 15 of her brief defendant in error refers to and quotes from the case of *Van Matre* v. *Sankey*, 148 Ill. 536. In that case, at page 555, the Supreme Court of Illinois, referring to the decision of the Supreme Court of Pennsylvania, said.

> "It being the court of last resort it must be presumed, *in the absence of anything appearing to the contrary*, that it did not adjudicate *unless it had jurisdiction to render judgment in the cause.*" (Italics are ours.)

It seems clear, therefore, from this language of the Supreme Court of Illinois that if there had been anything in the record of the judgment of the Pennsylvania court which showed that the courts of Pennsylvania did not have jurisdiction the Supreme Court of Illinois would have so held.

Defendant in error in her brief seems to place a great deal of stress upon the word, "recital." We think from the brief of defendant in error it is evident that she admits that where there is in the record what she calls a mere "recital" that then and in such case when a judgment of a sister state is sued on the question of jurisdiction is open to inquiry.

Webster's law definition of "recital" is as follows:

> "The formal statement or setting forth of some matter of fact in any deed or writing in order to explain the reasons on which the transaction is founded; the statement of matter in pleading, introductory to some positive allegation."

Plaintiffs in error contend that under this definition of "recital" there may be included not only

the recital in a record of a judgment that due process had been served upon the defendant but would include any findings of or adjudication by the court in which the judgment was rendered upon pleas in abatement, evidence in regard thereto as to the question of the jurisdiction of the court rendering the judgment.

For instance: in 40 Ia. 220, *supra*, the court said:

> "This court in an action on a Missouri judgment, which *recited an adjudication, etc.*"

The case of *Waldo* v. *Waldo*, 52 Mich. 94, cited and quoted from on pages 19 and 20 of brief of defendant in error, was one where there was involved the question of the validity of a decree of divorce. In the statement of facts in that case it appears that the defendant in the divorce suit ***appeared and submitted to the jurisdiction of the Indiana court.*** Of course, under these conditions any order or decree made by the Indiana court would be binding on the defendant.

The case of *Forsythe* v. *Hammond*, 166 U. S. 506, cited by defendant in error, does not apply to the case at bar. Proceedings were instituted by the City of Hammond to bring certain lands within the corporate limits of the City of Hammond, Indiana. The board denied the petition of the city. The matter was taken to the Circuit Court of Indiana and decision of the board reversed.

Subsequently Mrs. Forsythe brought a proceeding in the Supreme Court of Indiana to reverse the decision of said Circuit Court. In bringing this action in the Supreme Court of Indiana, Mrs. For-

sythe submitted herself to the jurisdiction of that court and the question as to whether or not the court had jurisdiction of Mrs. Forsythe was not involved. Hence that case is not in point.

The case of *in re Wrisley*, 128 Mich. 109, cited by defendant in error in her brief on page 6, has no application to the questions involved in the instant case. In that case it appeared that Mrs. Wrisley filed her bill of complaint for divorce in the Circuit Court for the County of Kalamazoo, Michigan. Service was had by publication and divorce granted. Subsequently Mr. Wrisley filed his bill for divorce in the Circuit Court of Charlevoix county, Michigan. He then filed his petition in the Circuit Court of the County of Kalamazoo for an order setting aside the decree of divorce granted Mrs. Wrisley on the ground that the court had no jurisdiction because no process had been served upon him, etc. The Circuit Court of Kalamazoo county set aside this decree of divorce and held that it had jurisdiction and that the Circuit Court of Charlevoix county had no jurisdiction. In the case in the County of Kalamazoo an order for temporary alimony was granted and defendant refusing to comply with it application was made for an order putting him in contempt and the order was granted. In the meantime Mrs. Wrisley filed her plea in abatement in the Circuit Court of the County of Charlevoix, claiming that the Circuit Court of Kalamazoo county had sole jurisdiction because her action in that court was brought prior to the bringing of the action in the Circuit Court of Charlevoix county. By the plea in abatement the only question raised

was as to whether or not the Circuit Court of Charlevoix county had no jurisdiction because of prior pendency of the action in Kalamazoo county. There was no question in either of said courts as to jurisdiction over the person of Mrs. Wrisley.

Of course where the court has jurisdiction over the person then its orders, decrees or judgments are binding on that person until reversed.

The facts in this Michigan case show that the decision therein has no bearing on any of the questions here involved.

Plaintiffs in error will not lengthen this brief by an analysis of the other cases cited by defendant in error in her brief. However, we are clearly of the opinion that none of the cases cited by defendant in error supports her position and none of the said cases is contrary to the propositions asserted by plaintiffs in error in their brief and herein and some of said cases support the contentions of plaintiffs in error.

The suing out of a writ of error in the Court of Civil Appeals of Tennessee and petitioning for a writ of certiorari from the Supreme Court of Tennessee were not the bringing of an original or a new action in either of those courts.

This position is fully supported by the cases of *Nations* v. *Johnson*, 24 How. 195, 204, and *Pennoyer* v. *Neff*, 95 U. S. 714, at page 734.

If the Circuit Court of Chester county, Tennessee, did not have jurisdiction of plaintiffs in error then that court had no power or authority to render judgment against plaintiffs in error, neither

did the court of Civil Appeals have the power or authority to render judgment against plaintiffs in error.

In the case of *Goldey* v. *Morning News*, 156 U. S. 518, this court held:

> "Irregularity in a proceeding by which jurisdiction is to be obtained is in no case waived by special appearance of the defendant for the purpose of calling the attention of the court to such irregularity."

In the case of *Harkness* v. *Hyde*, 98 U. S. 476, the defendant insisted upon the objection to the illegality of service and this court held that there was no waiver because thereof and also held that when the motion to dismiss on the ground of illegality of service had been overruled, defendant did not waive his rights by answering to the merits of the action. In that case this court also held that it was only where a defendant pleads to the merits in the first instance without insisting upon the illegality that the objection is deemed to be waived.

In the case of *Walling* v. *Beers*, 120 Mass. 549, it was held that the defendant by proceeding to trial after the overruling of his objections to the jurisdiction of the court did not lose his right to say that he did not thereby withdraw his protest against the jurisdiction of the court.

In the case of *Fisher Sons & Co.* v. *Crowley*, 57 W. Va. 312, the court said:

> "For the proposition that proceeding to trial and judgment after a motion to quash a defective summons is a waiver of the defect, there is absolutely no authority in this state. All the decided cases declare the contrary."

In support of the contentions of the Chicago Life in this case we call particular attention to the cases of *New River Mineral Company* v. *Seeley*, 120 Fed. 193, and *Bennett* v. *Supreme Tent of Knights of Maccabees*, 82 Pac. 744.

In the case in 82 Pac. the court held that the process was not served on the insurance commissioner by virtue of his office nor did he derive his authority to bind the defendant from his office or from the laws of the state; that his entire authority comes from the commission executed by the insurance company or the association. The record in the case at bar fails to show that any such authority was conferred upon the insurance commissioner of Tennessee by the Chicago Life.

In view of these and other decisions cited by plaintiffs in error how can it be said that when a defendant files a plea in abatement objecting to the service and raising the question of jurisdiction, that upon the sustaining of a demurrer to such plea in abatement or a hearing upon such plea and overruling of the same, the doctrine of *res adjudicata* applies? If a defendant's objections or plea in abatement are overruled and the same are not waived by answer to the merits then how can it be said that the doctrine of *res adjudicata* applies when suit is brought in another state upon the judgment obtained? If, as decided in the cases mentioned, such a course by a defendant waives none of his rights to still continue to object to the jurisdiction of the court then certainly the doctrine of *res adjudicata* cannot apply.

To apply the doctrine of *res adjudicata* in the case at bar would be to deprive this court of the power or right to determine whether or not there had been due process of law. If *res adjudicata* is to be applied in this case to prevent inquiry as to jurisdiction then the result will be that no matter what character of service is had upon the defendant, whether the service of process amounts to due process of law or not, if the defendant asks the court to pass upon that process or raises the question of jurisdiction and the court decides it has jurisdiction then the decision amounts to due process of law regardless of whether or not there had been legal service of process or any service of process at all.

Supposing in a certain class of actions the statutes of a state specifically provided how process should be served and supposing, further, that the record in which the judgment was obtained showed clearly that service had not been made in accordance with the provisions of the statute; supposing, further, that in the case in which the judgment was obtained defendant filed a plea in abatement raising the question of jurisdiction and the plea was heard and tried by the court which adjudicated that it had jurisdiction, could it be said that when a suit was brought in another state upon such judgment, and the record showed the above matters, defendant could not raise the question of jurisdiction because of the doctrine of *res adjudicata* and that no court, where such judgment was involved, could go into the question as to whether or not there had been due process of law?

Plaintiffs in error assert that as to the question whether or not they were entitled in the action in the Superior Court of Cook county, to go into the question of the jurisdiction of the Tennessee courts, there is no difference in principle whether the record of the judgment showed a *recital* that defendant had been legally served with process or showed that pleas in abatement had been filed and passed upon by the court in which the judgment was rendered and an adjudication that the court had jurisdiction.

It is a fair inference from what defendant in error has said in her brief that if the record of the judgments and proceedings of the Tennessee courts had shown merely a recital that those courts had jurisdiction or that process had been legally served on plaintiffs in error then the question of jurisdiction could have been gone into when suit was brought upon such judgment or judgments. Therefore plaintiffs in error claim that in her brief in effect defendant in error has admitted the soundness of the propositions asserted by plaintiffs in error.

Plaintiffs in error insist that the doctrine of *res adjudicata* can only apply when the court has actually had jurisdiction of the parties to the action. As shown hereinabove by numerous authorities the fact that a court had *adjudicated* that it had jurisdiction does not confer jurisdiction upon the court over the parties. There is no such thing in the law as decretal *res adjudicata*.

Under the decisions cited by plaintiffs in error herein and in their brief they had the right to introduce evidence in the Superior Court of Cook county

to show want of jurisdiction in the Tennessee courts. The sustaining of objections by that court to the offer of such evidence by plaintiffs in error and affirmance of such ruling by the Appellate Court of Illinois, were based upon the holdings of said courts that *res adjudicata* applied. Because thereof plaintiffs in error were deprived of their right to show by such evidence that said judgments of the Tennessee courts were rendered without due process of law.

Wherefore plaintiffs in error ask that the judgment of the Appellate Court for the First District of Illinois be reversed, this cause remanded to said Appellate Court with directions to remand the cause to the Superior Court of Cook county, Illinois, and dismiss the same.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1916.

No. 171.

CHICAGO LIFE INSURANCE COMPANY and THE FEDERAL LIFE INSURANCE COMPANY, *Plaintiffs in Error,*

vs.

BERTHA R. CHERRY, *Defendant in Error.*

Error to the Appellate Court for the First District of the State of Illinois.

Brief and Argument for Plaintiffs in Error.

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CHAMPLIN LAW PRINTING CO.

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a judgment against plaintiffs in error in the sum of $1,666.25 and costs; that thereafter on the 31st day of December, 1908, plaintiffs in error sued out of the Court of Civil Appeals of the State of Tennessee, a writ of error to reverse and correct said judgment rendered in said Circuit Court of Chester county; that thereafter on the 23d day of January, 1909, by the consideration of said Court of Civil Appeals the said judgment of the said Circuit Court of Chester county was affirmed and it was ordered and adjudged by said Court of Civil Appeals that the defendant in error have and recover from said plaintiffs in error the sum of $1,666.25 and interest amounting to $95.79 and costs of suit and that subsequent thereto said plaintiffs in error filed a petition for certiorari in the Supreme Court of Tennessee to revise the judgment of said Court of Civil Appeals and that on the 12th day of June, 1909, said cause was heard by said Supreme Court and it was by that court ordered, adjudged and decreed that said writ of certiorari be dismissed and that the defendant in error have and recover from said plaintiffs in error the costs incident to said writ of error, including costs of said certiorari proceedings; that said plaintiffs in error have not paid to defendant in error the said sums of money so by her recovered as aforesaid to her damage in the sum of $2,500, for which she brings said suit. (Tr. pp. 4-5.)

With this declaration there were filed copies of (Tr. pp. 6-7-8-9-10) the judgment orders of the Tennessee courts and a copy of the cost bill in the Tennessee courts.

On March 28, 1910, the said Superior Court overruled and denied the motion of each said plaintiffs in error to require defendant in error to file copy of the instrument sued on. (Tr. p. 11.)

On April 21, 1910, the said Federal Life filed three pleas to said declaration. In the first plea it averred that there was not any record of the supposed recovery in the said declaration mentioned remaining in said courts in the State of Tennessee in the manner and form as defendant in error in her said declaration alleged and prayed judgment if the defendant in error ought to have her aforesaid action against it. In said second plea it averred that at the time of the said alleged recoveries and before and at the time of the supposed service of process upon it the said plaintiff in error was a corporation organized and doing business under the laws of the State of Illinois and was not licensed to nor doing business in the State of Tennessee and that it was not served with process in said alleged suits and did not accept nor authorize any one for it to accept service of process in said suits and did not authorize an appearance by attorneys or otherwise therein and did not have notice of the supposed proceedings nor was it nor the officers or agents upon whom service could be had found or served with process in said actions in said declaration mentioned and prayed that this might be inquired of by the country. In said third plea it is averred that said defendant in error ought not to have her said action against it because it says it is a corporation organized and doing business under the laws of the State of Illinois and that before

and at the time of the supposed recoveries in the said declaration mentioned, it was not licensed to nor doing business in the State of Tennessee and that the said several supposed recoveries in said declaration mentioned were recoveries in whole or in part on and for a penalty and to enforce a penal law of the State of Tennessee, all of which it was ready to verify and prayed judgment if the defendant in error ought to have her aforesaid action against it.

These pleas were duly sworn to by one of the attorneys for said Federal Life. (Tr. pp. 11-12-13.)

On the 9th day of June, 1910, the Chicago Life filed three pleas to said declaration, which pleas are in substance and effect the same as the pleas filed by Federal Life, and the same were sworn to by one of the attorneys for said Chicago Life. (Tr. pp. 13-14.)

On February 25, 1911, the said Superior Court overruled and denied the motion of defendant in error to strike each and all of said pleas from the files. (Tr. p. 14.)

On March 8, 1911, defendant in error filed her replication to the said pleas of the Chicago Life and in said replication as to said first plea averred that said defendant in error by reason of anything in said plea alleged ought not to be barred from having her aforesaid action because she says there is such record of said recoveries remaining in the Circuit Court of Chester County, and in the said Court of Civil Appeals and the said Supreme Court of Tennessee, as in her declaration alleged and this she is ready to verify by the record, etc.

In said replication as to said second plea whereof it has put itself upon the country, defendant in error does the like.

In her replication as to said third plea, defendant in error says that by reason of anything in that plea alleged she ought not to be barred from having her aforesaid action because she says that said recoveries in whole or in part were not had upon and for a penalty and were not to enforce a penal law of the State of Tennessee. (Tr. p. 15.)

On said March 8, 1911, defendant in error filed her replication as to the pleas of said Federal Life which were in substance and effect the same as the replication filed by the defendant in error to the said pleas of said Chicago Life. (Tr. p. 16.)

On January 23, 1912, defendant in error obtained leave to amend her replication to the second pleas of said plaintiffs in error and on said date she filed an amended replication to said second plea of said Chicago Life averring therein that by reason of anything in that plea alleged she ought not to be barred from having her aforesaid action because said Chicago Life is estopped from denying the jurisdiction of the said Circuit Court of Chester County, said Court of Civil Appeals and said Supreme Court over it because she says that heretofore, to wit, on February 24, 1907, one, C. L. Parrish, clerk of said Circuit Court of Chester county, issued and delivered to the sheriff of Davidson county, Tennessee, a certain summons, copy of which summons is incorporated in said amended replication and is as follows:

"SUMMONS.

Mrs. Bertha R. Cherry

vs.

Chicago Life Insurance Co. *et al.*

The State of Tennessee to the Sheriff of Davidson county, Greeting:

You are hereby commanded to summons Chicago Life Insurance Company, a foreign corporation authorized to do business in Tennessee, and the Federal Life Insurance Company, also a foreign corporation, if to be found in your county, to appear before the judge of our Circuit Court, to be held for the County of Chester at the court house in the Town of Henderson on the first Monday in June next, then and there to answer Mrs. Bertha Ripman Cherry in an action of debt due by policy issued by the Chicago Life Insurance Company on the life of Rufus M. Cherry for her benefit, for the sum of twelve hundred and fifty ($1,250.00) dollars and reinsured by the said Federal Life Insurance Company, and the further sum of five hundred ($500.00) dollars attorneys' fee and interest to her damage eighteen hundred ($1,800.00) dollars.

Here fail not and have you then and there this writ.

Witness C. L. Parrish, clerk of our said court at office the 4th Monday in February, A. D. 1907.

C. L. Parrish, *Clerk.*"

That on the 20th day of May, 1907, Reau E. Folk, Insurance Commissioner of the State of Tennessee, then and there endorsed on said summons the following:

"By virtue of authority in me vested I have today acknowledged service of the within summons for the Chicago Life Insurance Company,

this the 20th day of May, A. D. 1907, at 11:30 a. m. Reau E. Folk, Insurance Commissioner,"

all of which was then and there filed in the office of the clerk of said Circuit Court of Chester county, on May 28, 1907; that service of said process was in accordance with the statute laws of the State of Tennessee, in such case made and provided and that defendant in error filed her declaration in said cause setting out her cause of action against said Chicago Life and it appeared as required by said summons and submitted to the jurisdiction of said court and on the 16th day of September, 1907, filed its certain plea in abatement in said cause in which plea in abatement said Chicago Life set forth the following:

"1. That said writ or summons is addressed to the sheriff of Davidson county and not Chester county in which said suit is instituted and that it does not show that it is a counterpart summons or that there is a defendant who has been served with process in Chester county.

2. That the writ or summons shows on its face that it was never served upon the Insurance Commissioner by the sheriff of Davidson county, but that service of process is acknowledged on behalf of the plaintiff in error, Chicago Life Insurance Company by said Commissioner; that the Acts of 1896, chapter 160, Sec. 9, Sub-sec. 3, requiring a foreign insurance company to file a power of attorney with the Insurance Commissioner, constituting him an agent upon whom process may be served, does not authorize the commissioner of insurance to acknowl-

edge service of process on behalf of foreign insurance companies, but expressly provides that such process must be served upon such commissioner by the proper officer of the county in which the commissioner may have his office.

3. That said Insurance Commissioner was not in the said County of Chester at the time the writ or summons was issued and was not in said county at the time he acknowledged service of process on behalf of plaintiff in error; under the above act authorizing the service of process upon the Commissioner he is made the statutory agent of said plaintiff in error and merely stands in its place and that for this reason suit must be brought in the county where the Commissioner lives and where he has his office and cannot be brought in the county where he does not live and has no office and when he is not in the county either at the time the said writ or summons was issued or at the time that he acknowledged service of process for plaintiff in error and asks that said writ or summons be quashed and abated and suit be dismissed." That said plea in abatement was sworn by the attorney for said Chicago Life. (Tr. pp. 17-18-19-20.)

That on June 28, 1908, said defendant in error filed her demurrer to said plea in abatement of said Chicago Life, and set forth two causes of demurrer: (1) Because none of the reasons assigned in said plea in abatement for want of proper service of process are sufficient to show want of legal service; (2) Because from the facts appearing from the process issued and returned and from the allegations stated in said pleas the said Chicago Life had

been legally and properly served with process and is properly before the court. (Tr. p. 21.)

That on the 3d day of February, 1908, the said Circuit Court of Chester county heard said demurrer and after argument of counsel, the court was of opinion that the demurrer was well made and that said plea should be overruled and disallowed which was so ordered with leave to plaintiff in error to plead to said cause of action if it so desired, when said counsel for Chicago Life stated in open court that he was not authorized to represent it further.

That on February 3, 1908, after due consideration, the court sustained the demurrer of said defendant in error to said pleas in abatement of said Chicago Life and it was ordered to answer the declaration of defendant in error in said Circuit Court of Chester county, to all of which said plaintiff in error excepted and which exceptions were overruled by said court.

That on February 3, 1908, plaintiffs in error were solemnly called to come into open court as they were bound to do, came not but made default; jury called; cause submitted on evidence introduced by defendant in error; verdict and judgment for defendant in error against plaintiffs in error in the sum of $1,666.25, being for $1,250, interest thereon, $75, and $341.25 for costs and expenses incurred by defendant in error including attorney's fees. (Tr. pp. 21-22.)

That thereafter on December 31, 1908, said Chicago Life sued out of said Court of Civil Appeals a writ of error to revise and correct said judgment

rendered by said Circuit Court of Chester county and on January 23, 1909, the said Court of Civil Appeals heard said cause and affirmed said judgment of said Circuit Court of Chester county and rendered judgment against plaintiffs in error in the sum of $1,666.25 and $95.79 interest and costs of suit. (Tr. pp. 22-23.)

That thereafter said Chicago Life filed in the Supreme Court of Tennessee its petition for writ of certiorari (Tr. pp. 23-24); that on April 29, 1909, an order was entered of record in said Supreme Court that said petition be placed upon the docket of that court for hearing. (Tr. p. 24.)

That on June 12, 1909, in said Supreme Court said cause came on to be heard upon said petition and said Supreme Court found that the said Circuit Court of Chester county did have jurisdiction of said plaintiffs in error and that they and each of them were properly before that court by due process of law and that there was no error in the judgment of the Court of Civil Appeals dismissing the writ of error sued out by the said Chicago Life and said Federal Life seeking to review and reverse the judgment of said Circuit Court of Chester county and the said judgment of the Court of Civil Appeals was in all things affirmed and the writ of certiorari dismissed and judgment for costs in favor of defendant in error against plaintiffs in error. (Tr. pp. 24-25.)

In said amended replication, filed in Superior Court of Cook county, Illinois, it is further averred that the question of jurisdiction raised by said Chicago Life in its second plea was the same and iden-

tical question of jurisdiction raised by it in said Circuit Court of Chester county, said Court of Civil Appeals and said Supreme Court and that by reason of all the facts thereinbefore set forth and by reason of the judgments of said Circuit Court of Chester county and said Court of Civil Appeals and said Supreme Court the question of jurisdiction presented by said Chicago Life in its said second plea has been fully and completely adjudicated and that by reason thereof it is estopped from questioning in this court the jurisdiction over it of said Circuit Court, said Court of Civil Appeals and said Supreme Court, all of which the said defendant in error is ready to verify by said record; wherefore she prays judgment. (Tr. pp. 25-26.)

That on the 23d day of January, 1912, defendant in error filed in the Superior Court of Cook county, Illinois, her amended replication to the second plea of Federal Life, in which amended replication it is averred, among other things, that on June 24, 1907, the clerk of said Circuit Court of Chester county, Tennessee, issued and delivered to the sheriff of said county certain summons, a copy of which summons is incorporated in said amended replication and therein is contained the following language:

> "You are hereby commanded to summon the Federal Life Insurance Company, a foreign corporation, if to be found in your county, to appear before the judge of our Circuit Court to be held for the County of Chester," etc.

That on June 24, 1907, said sheriff of Chester county returned said summons bearing the following endorsement:

"Executed as within directed by reading the same to G. G. Butler, agent of the Federal Life Insurance Company, or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued upon and who was the agent of the Chicago Life Insurance Company and it being the agent of the Federal Life Insurance Company in the delivery of the policy sued upon and represented said corporation at the time.

This 24th day of June, 1907.

Form 21.

Filed June 28, 1907. B. F. Weir, sheriff of Chester Co.; C. L. Parrish, clerk." (Tr. pp. 26-27.)

It is also averred in said amended replication that notice of the bringing of said action by defendant in error in said Circuit Court of Chester county and a true and correct copy of said process and copy of said sheriff's return thereon were lodged with the vice-president of said Federal Life in the City of Chicago, Illinois, on June 29, 1907. An affidavit showing such service, of said papers in Chicago, Illinois, is set forth in said amended replication. (Tr. pp. 27-28-29.)

In said amended replication it is also averred that said service of process upon said Federal Life was in accordance with the statute laws of the State of Tennessee in such case made and provided as to foreign corporations and that thereafter defendant in error filed a declaration setting out her cause of action against said Federal Life and that it appeared as required by said summons and submitted to the jurisdiction of said Circuit Court of Chester county and filed its plea in abatement, challenging the jurisdiction of said court. (Tr. p. 29.)

That in said amended replication a copy of said plea in abatement is incorporated and is as follows:

> "The defendant for plea in abatement to the summons or writ in this cause and to this suit says:
>
> The summons or writ shows that it was served upon one G. G. Butler, who was designated as agent of the Federal Life Insurance Company, or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued on. This is attempted service under sections 4545 and 4546 of Shannon's Code of the state, providing that service of process can be had upon a foreign corporation by service upon the agent who represented the corporation at the time of the transaction out of which the suit arose.
>
> The defendant, Federal Life Insurance Company, states that the said Butler was not its agent at the time that this application for this policy was taken out, nor at the time that this policy was delivered. The said Butler has never been the agent of the Federal Life Insurance and the Federal Life Insurance Co. has never had any relation with said Butler in any way whatever.
>
> The Federal Life Insurance Co. has never done business in the state and has never been licensed to do business in this state, and therefore, could not have had an agent here who was authorized either to solicit applications or to deliver policies. For these reasons the defendant, Federal Life Insurance Co., prays that the writ of summons in this case be quashed and this suit abated."

That on January 28, 1908, defendant in error filed her plea to said plea in abatement of said Federal Life copy of which is incorporated in said amended replication and is as follows:

"PLEA OF PLAINTIFF TO DEFENDANT FEDERAL LIFE INSURANCE COMPANY'S PLEA IN ABATEMENT.

Plaintiff denies the allegation in the plea in abatement of the Federal Life Insurance Co. that G. G. Butler was not the agent for the said Federal Life Insurance Co., when the policy upon which this suit is based was issued and delivered to the deceased.

She denies the allegation that the said Butler has never been the agent of the Federal Life Insurance Co., and never had any relation with the said company whatever.

She denies the allegation that said company has never done business in this state, but plaintiff alleges that the policy issued in this case was turned over to the said Butler by the Federal Life Insurance Company to be delivered to Rufus M. Cherry, whose life was insured, and that said Butler did deliver and turn over said policy to him as the agent for the said Federal Life Insurance Co. and that the said Federal Life Insurance Co. has many policies now outstanding in the State of Tennessee, on which premiums are being paid to the Federal Life Insurance Company, and that the said company is doing life insurance business in the State of Tennessee."

That thereafter on February 3, 1908, said plea in abatement was heard and the replication of defendant in error thereto, and issue joined thereon and submitted to the said court without the intervention of a jury when after hearing proof introduced and argument of counsel, the court found the issues in favor of defendant in error and overruled the said plea in abatement and gave leave to said Federal Life to plead to said cause of action, if it so desired, when its counsel stated in open court that he

was not further authorized to represent it. (Tr. p. 31.)

That after the overruling of said plea in abatement, plaintiff in error, Federal Life Insurance Company, filed its bill of exceptions, setting out all the matters and evidence considered by the court in finding said issues for the defendant in error; the bill of exceptions was signed and sealed by the court and ordered to be filed and made a part of the record. (Tr. pp. 31-32.)

Then follows the same averments as to said Federal Life being called and making default; submission to jury; verdict and judgment against said plaintiffs in error as averred in the amended replication to second plea of Chicago Life. (Tr. pp. 32-33.)

Incorporated in this amended replication is a copy of the petition for certiorari filed by both plaintiffs in error in the Supreme Court of Tennessee, setting forth therein that neither said Circuit Court of Chester county nor the said Court of Civil Appeals had jurisdiction over the person of said plaintiffs in error or either of them and asking that said writ of certiorari be granted by said Supreme Court. (Tr. p. 34.)

Then follows the same allegations as to proceedings in the Tennessee courts as to said Federal Life as set forth in said amended replication to the second plea of said Chicago Life (Tr. pp. 35-36), and the same averments as to estoppel to raise the questions in the Superior Court of Cook county, Illinois, as to said Federal Life, as averred in said amended replication as to Chicago Life. (Tr. pp. 36-37.)

On March 29, 1912, the Federal Life filed a motion in said Superior Court of Cook county to strike from the files said amended replication of defendant in error, filed in Superior Court of Cook county, Illinois, and on the same day filed its demurrer to said amended replication, setting forth that the matters therein contained were not sufficient in law for defendant in error to maintain her aforesaid action and that said plaintiff in error was not bound by law to answer the same and that for want of sufficient allegations in that behalf Federal Life prayed judgment that defendant in error be barred from maintaining her aforesaid action; that the matters and things in said amended replication set forth were matters and things which the said defendant in error was obliged to allege in her declaration, and were matters and things which said defendant in error was obliged to prove under her declaration. (Tr. pp. 37-38.)

Chicago Life on April 25, 1913, filed its motion to strike said amended replication to its second plea from the files and also on said date filed its demurrer thereto, setting forth the same grounds as in the demurrer of said Federal Life. (Tr. pp. 39-40.)

On September 23, 1913, said Superior Court of Cook county overruled and denied each of said motions and demurrers and gave leave to said plaintiffs in error to reply to said amended replications and also denied the motions of said plaintiffs in error that defendant in error be required to file a copy of the instrument sued on in that court. (Tr. p. 40.)

On September 26, 1913, Federal Life filed its rejoinder to said amended replication to its second

plea and therein set forth that defendant in error ought not by reason of anything set forth in said amended replication to have or maintain her said action against said plaintiff in error, because it says that neither the said G. G. Butler nor said Chicago Life Insurance Company mentioned in said replication as agent of or representing said plaintiff in error, had any right, power or authority to act as its agent or represent it and that neither of said supposed attorneys mentioned in said amended replication as representing it had any right, power or authority to enter its appearance to give the said Circuit Court of Chester county or said Court of Civil Appeals or said Supreme Court any jurisdiction of any kind or nature over said Federal Life, and that neither of said Tennessee courts had jurisdiction over its person; that it did not at any time admit to the jurisdiction of either of said Tennessee courts and that neither of said Tennessee courts had jurisdiction, power or authority to render any judgment against it. (Tr. p. 41.)

On October 2, 1913, said Chicago Life filed its rejoinder to said amended replication to its second plea setting forth that said defendant in error ought not to have or maintain her aforesaid action by reason of anything set forth in her said amended replication because the said writ of summons set forth in said amended replication shows upon its face that it was never served upon the Insurance Commissioner of Tennessee by the sheriff of Davidson county, Tennessee, or by any other officer, but that the service of said process was acknowledged on behalf of plaintiff in error by said insurance commissioner.

That the Act of 1895, chapter 160, section 9, subsection 3, of the laws of the State of Tennessee, require a foreign insurance company to file a power of attorney with said insurance commissioner, constituting him an agent upon whom process can be served and does not authorize said Insurance Commissioner to acknowledge service of process on behalf of foreign insurance companies, but expressly provides that such process must be served upon such Commissioner by the proper officer of the county in which the Commissioner may have his office and that it was a corporation organized and doing business under the laws of the State of Illinois and was not licensed to nor was it doing business in the State of Tennessee; that it was not served with process in said alleged suit, did not acknowledge or accept, nor did it authorize anyone for it to acknowledge or accept service of process in said suit; that neither of said courts of Tennessee at any time had or acquired jurisdiction over its person, in manner and form as by the said replication and amended replication alleged. (Tr. p. 42.)

On November 13, 1913, defendant in error filed a replication setting forth that she ought not to be barred from having her aforesaid action by reason of anything set forth in the first plea of said Federal Life, because she says there is such a record of the said recoveries remaining in said Tennessee courts as she has in her declaration alleged and as to third plea of Federal Life she alleges that the said recoveries in her said declaration mentioned were not recoveries in whole or in part or for a penalty and

were not to enforce a penal law of the State of Tennessee. (Tr. pp. 43-44.)

On November 24, 1913, said cause in said Superior Court of Cook county came on for trial, and before any evidence was introduced by defendant in error, plaintiffs in error renewed their motions that the court require defendant in error to file a copy of the instrument sued on in said action, each of which motions said court overruled and to which ruling each of said plaintiffs in error excepted. (Tr. pp. 51-52.) The case proceeded to trial before court and jury and verdict was rendered as follows:

"We, the jury, find the issues for the plaintiff. We find the debt to be the sum of $1,801.50 and affix the plaintiff's damages in the sum of $425.82." (Tr. p. 44.)

Plaintiffs in error each filed a motion for a new trial, each of which motions was overruled and new trial denied, and to which rulings both plaintiffs in error excepted. Thereupon plaintiffs in error filed their motions in arrest of judgment, each of which motions was overruled and to which ruling of the court each of plaintiffs in error excepted.

Judgment was rendered in favor of defendant in error against plaintiffs in error by said Superior Court of Cook county in the sum of $1,801.50 debt and for defendant in error in the sum of $425.82 damages and costs of suit, to all of which both plaintiffs in error excepted and prayed an appeal from the judgment of said Superior Court; appeal allowed and amount of bond fixed. (Tr. pp. 44-45.)

Appeal bond approved December 13, 1913. (Tr. pp. 45-46); bill of exceptions signed, sealed, approved and filed. (Tr. p. 47.)

At the beginning of said trial plaintiffs in error each objected to the introduction of any evidence on behalf of defendant in error because said declaration of defendant in error did not state facts sufficient to constitute a cause of action in favor of defendant in error and against either of said plaintiffs in error and for the further reason that there is no transcript of the judgment alleged to be sued on in this action filed with the declaration at any time since the pendency of the action in said Superior Court of Cook county, which objections were overruled by said court and to which ruling each of plaintiffs in error then and there duly excepted. (Tr. pp. 54-55.)

Before the introduction on said trial of any evidence by defendant in error, plaintiffs in error each further objected to the introduction of any evidence by defendant in error for the reason that counsel for defendant in error stated in open court that the action was upon a judgment in the Court of Civil Appeals in the State of Tennessee, the declaration showing that several judgments were rendered against plaintiffs in error in favor of defendant in error by different courts in Tennessee, which objections were overruled and to which ruling plaintiffs in error then and there duly excepted. (Tr. pp. 54-55-56-57-58-61.)

Plaintiffs in error, on the trial of this cause in said Superior Court of Cook county, objected to the

introduction of "Exhibit 1" of defendant in error, which purported to be an exemplification of the record in each of said Tennessee courts, because same was a clear variance from the copy of the instrument filed with the declaration and a clear variance from the declaration itself, which objections were overruled and to which ruling plaintiffs in error then and there duly excepted. (Tr. pp. 53-57-61.)

Chicago Life further objected to the introduction in evidence of said "Exhibit 1" by defendant in error for the reason that said exhibit shows that there never was any service on it or on any of its agents, by the sheriff of Chester county, or any other county, by an official of the State of Tennessee, which objection was by said Superior Court of Cook county overruled; to which ruling plaintiff in error, Chicago Life Insurance Company, then and there duly excepted. (Tr. p. 58.)

Further objection was made by Federal Life on the trial that said exhibit did not show service upon it, or on any agent of said Federal Life Insurance Company and for the further reasons that said exhibit shows that Federal Life was a foreign corporation and not doing business in the State of Tennessee nor incorporated in that state. (Tr. p. 58.)

Further objection was made by Federal Life to the introduction in evidence of said "Exhibit 1" for the reason that said exhibit shows a character of service which deprives it of its property without due process of law and the declaration of defendant in error does not allege facts sufficient to state a cause of action against it and the said exhibit is not ad-

missible in evidence and is not an exemplified record as required by the Acts of Congress. (Tr. p. 58.)

Each and all of said objections were by said Superior Court of Cook county overruled and to each of which rulings said plaintiffs in error each duly excepted. (Tr. pp. 58-61.)

The Superior Court of Cook county, in ruling upon said objections, held that it could not examine the record facts of the Tennessee courts to determine whether the Tennessee courts had jurisdiction of plaintiffs in error because of the holding of the Tennessee courts that they had jurisdiction of plaintiffs in error. (Tr. pp. 58-60.)

On the hearing in said Circuit Court of Chester county, Tennessee, on the plea in abatement of Federal Life, it was agreed that the following facts are true and the same might be used in evidence by either party on the trial of the issues joined on the plea in abatement filed by it, to wit:

> "1. That the Federal Life Insurance Co. has never been licensed to do business in this State, and has never issued policies of insurance in this State.
>
> 2. That the application upon which this policy was issued was made by Rufus M. Cherry on the regular application blanks of the Chicago Life Insurance Co., through its agent, G. G. Butler, and at said time the said G. G. Butler was not the agent of the Federal Life Insurance Co.
>
> 3. That the policy herein sued upon was reinsured in the Federal Life Insurance Co. by the Chicago Life Insurance Company." (Tr. pp. 79-90.)

It further appeared in the proceedings in Tennessee that G. G. Butler never solicited insurance for Federal Life Insurance Company; that the policy of insurance issued by Chicago Life Insurance Company was sent to its general agent, W. S. Looney of Nashville, Tennessee, and that said Butler notified said Looney to send the policy to J. W. N. Baird for delivery to the insured, Cherry.

After the assured, Cherry's, death, Butler was authorized by Federal Life to submit a proposition of compromise to defendant in error; he had the check of the Federal Life; the offer was not effected and that is all the connection the said Butler had with Federal Life. (Tr. pp. 79-80.)

The errors relied upon as to Chicago Life Insurance Company, are as follows:

1. The decisions of the Tennessee courts to the effect that they had jurisdiction over plaintiffs in error did not preclude the Superior and Appellate Courts of Cook county, Illinois, from examining the record facts in the Tennessee courts to determine whether or not there was jurisdiction to render the judgment over plaintiffs in error in the Tennessee courts.

2. The Tennessee suit having been brought in Chester county, Tennessee, the summons could not be directed to the sheriff of Davidson county, and therefore service upon an agent of that company in Davidson county did not confer jurisdiction upon the Circuit Court of Chester county.

3. The process was not served by the proper officer on the Insurance Commissioner, but it was

acknowledged by him; and inasmuch as the statute does not and Chicago Life did not authorize the Commissioner to acknowledge service, the service in this case was ineffectual to confer jurisdiction.

4. There should have been filed with the declaration in the Superior Court of Cook county a complete copy of the record and judicial proceedings in the Tennessee courts that was sued upon in the Cook county, Illinois, court.

5. The findings by the different Tennessee courts that they had jurisdiction of plaintiffs in error did not give those courts jurisdiction and especially did not give the Circuit Court of Chester county, Tennessee, jurisdiction over plaintiffs in error if the manner of service of process was not sufficient to give jurisdiction to the Circuit Court of Chester county, Tennessee.

As to the Federal Life Insurance Company, the errors assigned to be argued are as follows:

1. The Superior and Appellate Courts of Cook county, Illinois, were not precluded by the judgments of the Tennessee courts from examining into the record proceedings of the Tennessee courts to determine whether or not the Tennessee courts had jurisdiction of plaintiffs in error.

2. The service of process by the Tennessee court, as shown by the record, was not upon an officer or agent of Federal Life and therefore the Tennessee courts had no jurisdiction over Federal Life.

3. Defendant in error should have filed with her declaration a copy of the record proceedings of the Tennessee courts.

4. The findings by the different Tennessee courts that they had jurisdiction over plaintiffs in error did not give those courts jurisdiction over plaintiffs in error if the manner of service of process was not sufficient to give jurisdiction to the Circuit Court of Chester county, Tennessee.

5. The Tennessee statute, Sec. 4545, wherein service of process is authorized upon an agent who acted as such at the time the original transaction sued upon occurred, no matter what character of agency it was, is in violation of article V of the U. S. Constitution.

6. As to both plaintiffs in error the method of service of process by the Tennessee courts and their judgments thereon, are a deprivation of property without due process of law, in violation of Sec. 1, Art. XIV of amendments to the Constitution of the United States.

POINTS AND AUTHORITIES.

I.

1. The Illinois statute requires the plaintiff to file with the declaration a copy of the instrument sued upon; the statute is as follows:

> "If the plaintiff shall not file his declaration together with a copy of the instrument of writing or account on which the action is brought * * * ten days before the court at which the summons or *capias* is made returnable the court on motion of the defendant shall continue the cause at the cost of the plaintiff unless it shall appear that the suit was commenced within ten days of the sitting of the court, in which case the cause shall be continued without cost, unless the parties shall have agreed to have a trial; and if the declaration and copy of the instrument or writing or account on which the action is brought shall not be filed ten days before the second term of the court, the defendant shall be entitled to a judgment as in case of a nonsuit. * * *."
>
> Sec. 32, Chap. 110 Hurd's Illinois Statutes (1909).

2. The declaration and copy of the instrument sued upon are by this statute placed in the same category and the consequences of the failure to file either are the same.

Lambert v. *Jonte*, 28 Ill. App. 591.
Jefferson v. *Alexander*, 84 Ill. 278.

3. When suing in Illinois upon the record and judicial proceedings recovered in a sister state such

suit is upon the instrument of writing that would be the record and judicial proceedings that is entitled to full faith and credit according to article IV, section 1 of the Constitution of the United States and the Act of Congress, section 905, United States Revised Statutes passed in pursuance thereof.

4. It is the whole judicial proceedings of the sister state judgment that is sued upon because it is the whole record and not a part thereof from which the legal effect is determined and to which full faith and credit is given.

Vail v. *Iglehart,* 69 Ill. 332, 334.
State v. *Anders,* 68 Pac. 668 (Kans.).
Davidson v. *Murphy,* ~~15~~ Conn. 213. — 13
Smith v. *Jewell,* 42 Atl. 657 (Conn.).
Kirby v. *Canon,* 9 Ind. 371.
Noble v. *Shearer,* 6 Ohio, 426.
Sayles v. *Briggs,* ~~35~~ Mass. 421. — 43 —
23 Cyc, 1568.

5. Before the Constitution of the United States was adopted, containing the full faith and credit clause, the judgments of the several colonies or states were considered as foreign judgments and when sued upon in another colony or state were reexaminable not only as to the merits of the controversy but as to the court's jurisdiction to the same extent as they were in England.

Hilton v. *Guyot,* 159 U. S. 113, 181.
Bissell v. *Briggs,* 9 Mass. 462.

6. Defendant in error having failed to file a copy of the instrument sued upon ten days before the second term of court after which the suit was commenced, plaintiffs in error are entitled to a judgment as in case of a nonsuit according to the above statute of Illinois.

7. Defendant in error relies upon the Illinois court giving full faith and credit to the Tennessee judgments under article IV, section 1 of the United States Constitution, as follows:

> "Full faith and credit shall be given in every state to the public acts, records and judicial proceedings of every other state, and Congress may by general law prescribe the methods in which such acts, records and proceedings shall be proven and the effect thereof."

The Act of Congress passed in pursuance thereof is as follows:

> "That the records and judicial proceedings of the courts of any state shall be proved or admitted to any other court within the United States by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with the certificate of the judge, chief justice or presiding magistrate, as the case may be, that the said attestation is in due form. And the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the state from whence the said records are or shall be taken."
>
> U. S. Rev. Stat., Sec. 905.

II.

1. Whether the Tennessee courts had jurisdiction of plaintiffs in error in person is open to inquiry when those judgments are sued upon in a sister state.

D'Arcy v. *Ketchum,* 52 U. S. 11.
Harkness v. *Hyde,* 98 U. S. 476.
Haddock v. *Haddock,* 210 U. S. 572. 201
Thompson v. *Whitman,* 18 Wall. 457.
Sheldon v. *Wabash Ry. Co.,* 105 Fed. Rep. 785.
Williamson v. *Barry,* 8 How. 495.
Lafayette Ins. Co. v. *French,* 18 How. 404, 407.
Rape v. *Heaton,* 9 Wis. 328.
Field v. *Field,* 215 Ill. 496.
Lowe v. *Lowe,* 40 Iowa 220.
Gilman v. *Gilman,* 126 Mass. 26.

2. The Tennessee courts' decision that they had jurisdiction over plaintiffs in error was based upon the peculiar statutes of Tennesse in reference to foreign corporations.

Code of Tennessee, section 4543, is as follows:

> "Foreign Corporations Suable Here, When.—Any corporation claiming existence under the laws of any other state, or of any country foreign to the United States, found doing business in this state, shall be subject to suit here to the same extent that corporations of this state are by the laws thereof liable to be sued, so far as relates to any transaction had, in whole or in part, within this state, or any cause of action arising here, but not otherwise."

Code of Tennessee, section 4545, is as follows:

> "Process may be served upon any agent of said corporation found within the county where the suit is brought, no matter what character of agent such person may be, and, in the absence of such an agent, it shall be sufficient to serve the process upon any person, if found within the county where the suit is brought, who represented the corporation at the time the transaction out of which the suit arises, took place, or, if the agency through which the transaction was had, be itself a corporation, then upon any agent of that corporation upon whom process might have been served if it were the defendant. The officer serving the process shall state the facts, upon whom issued, etc., in his return; and service of process so made shall be as effectual as if a corporation of this state were sued, and the process has been served as required by law; but, in order that defendant corporation may also have effectual notice, it shall be the duty of the clerk to immediately mail a copy of the process to the home office of the corporation, by registered letter, the postage and fees for which shall be taxed as other costs. The clerk shall file with the papers in the cause a certificate of the fact of such mailing, and make a minute thereof upon the docket, and no judgment shall be taken in the case until thirty days after the date of such mailing."

3. In a suit upon a judgment record recovered in one state against a foreign corporation there is no presumption of jurisdiction arising from the judgment alone.

Galpin v. *Page*, 18 Wall. 350.

Settlemier v. *Sullivan*, 97 U. S. 444.

III.

1. Where a foreign corporation is not transacting business in the state where the judgment was rendered, the court rendering the judgment can acquire jurisdiction only where there has been an entry of appearance or its equivalent, to wit, waiver of service of legal process.

Pennoyer v. *Neff*, 95 U. S. 714.

Peterson v. *C. R. I. & P. Ry. Co.*, 205 U. S. 364.

Mutual Life Ins. Co. v. *Spratley*, 172 U. S. 602.

Goldey v. *Morning News*, 156 U. S. 518.

Central Grain & Stock Exchange v. *Board of Trade*, 125 Fed. Rep. 463.

St. Clair v. *Cox*, 106 U. S. 350.

Conley v. *Mathieson Alkali Works*, 190 U. S. 406.

Lafayette Ins. Co. v. *French*, 18 How. 404, 407.

Earle v. *Chesapeake & O. Ry. Co.*, 127 Fed. Rep. 235.

Nations v. *Johnson*, 24 How. 195, 204.

2. The court cannot acquire jurisdiction by deciding that it has jurisdiction.

The question of jurisdiction over the person of a defendant is one of general law according to that principle of natural justice which forbids condemnation without opportunity for defense.

Scott v. *McNeal*, 154 U. S. 34.

Thompson v. *Whitman*, 18 Wall. 457.

St. Clair v. *Cox*, *supra*.

Goldey v. *Morning News*, *supra*.

3. Service upon an agent of an agent is insufficient.

Service upon an individual who had represented a defendant in a single transaction when at the time of the service of process the transaction had ended is not legal service.

There was no legal service of process upon the Federal Life.

Mutual Life Ins. Co. v. *Spratley, supra.*

Peterson v. *C. R. I. & P. Ry. Co., supra.*

Union Pac. R. R. Co. v. *Miller,* 87 Ill. 45.

International T. B. Co. v. *Heart,* 136 Fed. Rep. 129.

Haas v. *Security Insurance Co.,* 57 N. J. Law 388.

IV.

1. Service of process on Chicago Life Insurance Company was not made by any officer upon an agent of the company; the insurance commissioner of Tennessee, without authority, accepted service. There is nothing in the record to show the insurance commissioner of Tennessee had authority either to be served with process or to accept service.

Where a statute provides the manner of service of process that method must be followed.

Old Wayne Mutual Life Assn. v. *McDonald,* 204 U. S. 8.

Alexandria v. *Fairfax,* 95 U. S. 774, 24 L. Ed. 583.

Settlemeier v. *Sullivan,* 97 U. S. 444, 24 L. Ed. 1110.

Army v. *Watertown No.* 1, 130 U. S. 301, 316, 32 L. Ed. 946.

Farmer v. *National Life Ins. Co. of Hartford,* 50 Fed. Rep. 829.

Swartz v. *Christie Grain Co.,* 166 Fed. Rep. 338.

Hebal v. *Amazon Ins. Co.,* 33 Mich. 400.

Eisenhofer v. *New York Zeitung,* 86 N. Y. St. 438; 91 App. Div. 94.

Kuhnen v. *Burt,* 108 Ga. 471.

Lamb v. *Gaston, etc., Co.,* 1 Mont. 64.

Lower v. *Wilson,* 9 S. D. 252.

Finney v. *Clark,* 86 Va. 354.

LeBlanc v. *Perroux,* 21 La. Ann. 26.

Cummings v. *Landes,* 140 Ia. 80.

Kibbe v. *Benson,* 17 Wall. 624, 21 L. Ed. 471.

Bennett v. *Sup. Tent of K. & M. of W.,* 82 Pac. (Wash.) 744.

2. The Statute of Tennessee, Sec. III, Chap. 253, Acts of Tennessee, as amended, referring to foreign corporations appointing an agent, says:

> "It shall, by duly executed instrument filed in this office, constitute and appoint the insurance commissioner, or his successor, its true and lawful attorney, upon whom all lawful process in any action or legal proceeding against it, may be served, and therein shall agree that any lawful process against it, which may be served upon its said attorney shall be of the same force and validity as if served on the company and that the authority thereof shall continue in force, irrevocably, as long as any liability of the company remains outstanding in this state. Any process issued by any courts of record in this state, and served upon said commissioner by the proper officer of the county

in which said commissioner may have his office, shall be deemed a sufficient process on said commissioner, and it is hereby made the duty of the insurance commissioner, promptly after such service of process by any claimant, to forward, by registered mail, an exact copy of such notice to the company."

3. According to the Tennessee statute, Art. No. 4535, process is to be served by an officer as follows:

"Original process shall be served by reading the same to the defendant, or offering to read it, in case he neglects or refuses to hear it read."

ARGUMENT.

I.

Defendant in error's declaration was filed in the Superior Court of Cook county, Illinois, February 14, 1910, which was in time for the March term of that court, beginning on the first Monday of March, 1910. (Tr. p. 4.)

Thereafter, on March 28, 1910, plaintiffs in error moved to have defendant in error file with her declaration a copy of the instrument sued on and this motion was denied. (Tr. pp. 10-11.)

Again on September 23, 1913, motions were made by plaintiffs in error in the Superior Court of Cook county to have defendant in error file with her declaration a copy of the instrument sued upon, and these motions were denied. (Tr. p. 50.)

According to paragraph 3114, chapter 37, Jones & Addington's Illinois Statutes, Annotated, which is as follows:

> "That the terms of the Circuit Court of Cook County shall commence on the third Monday of each month. That the terms of the Superior Court of Cook County shall commence on the first Monday of each month. * * *"

defendant in error did not file with her declaration a copy of the instrument sued upon at the second term of the court. Therefore, according to the Illinois statute quoted, under I of Points and Authorities, plaintiffs in error are entitled to have a judgment as by non-suit.

The Illinois statute does not define what character of instrument shall be filed with plaintiff's declaration; it merely says the copy of the instrument sued on must be filed with the declaration, and according to *Lambert* v. *Jonte, supra,* and *Jefferson* v. *Alexander, supra,* the declaration and the copy of the instrument sued upon are in the same category and a failure to file either results in a dismissal of the suit, at the second term of court. According to these same authorities the object of the statute requiring a copy of the instrument to be filed with the declaration is to enable the defendant to prepare a defense.

The character of instrument sued upon must be determined by construing the constitution and Act of Congress.

This was a suit upon a sister state record and judicial proceedings. Defendant in error asked that full faith and credit be given to this record according to article IV of the United States Constitution and the Act of Congress, United States Revised Statutes, section 905, passed in pursuance thereof, both of which assert that it is "the records and judicial proceedings" of the courts of any state that shall be entitled to "full faith and credit."

The record and judicial proceedings that are entitled to full faith and credit by the constitution are the original records; the original records cannot be produced; the instrument sued upon by defendant in error must have been the record and judicial proceedings required by the Act of Congress passed in pursuance of the constitution, and, as we understand it, that record should show the pleadings

showing what the subject-matter of the suit is, the process to be issued and served on the defendant, the character of that service of process in acquiring jurisdiction of the person, together with the judgment, order or decree entered against the defendant, plus the certificates thereto, because as the Act of Congress says:

> "And the said records and judicial proceedings authenticated as aforesaid shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from whence the said records are or shall be taken."

The instrument, therefore, sued upon must necessarily be either the original records and judicial proceedings, as provided by the constitution or the records and judicial proceedings that would finally be offered in evidence as required by the Act of Congress, as these are the only records and judicial proceedings that are entitled to full faith and credit.

Holding that defendant in error could merely file with her declaration a copy of the final order or decree of the Tennessee court, which is all that was filed, would amount to the assertion that defendant in error could declare upon a portion of the Tennessee records and judicial proceedings and under the Constitution and Act of Congress be entitled to the same full faith and credit as if she had declared upon the record and judicial proceedings as required by the Act of Congress. Filing less than a copy of the record and judicial proceedings enable defendant in error to have the full benefit of the full faith and credit clause but deprives plain-

tiffs in error from having a copy of the record and judicial proceedings of the Tennessee courts.

The Constitution and Act of Congress are calculated to give a force or credit to all the different portions of the record and judicial proceedings of each state greater than they formerly had; one portion of such record might be of advantage to one of the parties and another portion might nullify another portion and be of greater advantage to the other party to the record, but the defendant in error, by beginning suit on such record, is required to file a copy thereof.

The Act of Congress must have intended the substantial portions of the judicial proceedings such as the pleading, process, service, judgment, etc., as a unit and when certified to as required, that unit is entitled to full faith and credit.

II.

The Appellate Court of Illinois, in effect, decided that it could not inquire into the question of the jurisdiction of the Tennessee courts over plaintiffs in error for the reason that the Tennessee courts adjudicated upon the question and found they had jurisdiction of plaintiffs in error. (Tr. pp. 154-155-156.)

This court said, in *Thompson* v. *Whitman*, 18 Wall. 461, as follows:

> "'Upon principle,' says Chief Justice Marshall, 'it would seem that the operation of every judgment must depend upon the power of the court to render that judgment; or, in other words, on its jurisdiction over the subject-matter which it has determined.'"

Further, at page 468, the court said:

"But it must be admitted that no decision has ever been made on the precise point involved in the case before us, in which evidence was admitted to contradict the record as to jurisdictional facts asserted therein, and especially as to facts stated to have been passed upon by the court. But if it is once conceded that the validity of a judgment may be attacked collaterally by evidence showing that the court had no jurisdiction, it is not perceived how any allegation contained in the record itself, however strongly made, can affect the right so to question it. The very object of the evidence is to invalidate the paper as a record. If that can be successfully done no statements contained therein have any force. If any such statements could be used to prevent inquiry a slight form of words might always be adopted so as effectually to nullify the right of such inquiry. Recitals of this kind must be regarded like asseverations of good faith in a deed, which avail nothing if the instrument is shown to be fraudulent."

In *Gilman* v. *Gilman*, 126 Mass., p. 27, it is said:

"It has been often decided by this court, that the record of a judgment of a court of another state is entitled to full faith and credit in this commonwealth, under Art. 4, Sec. 1, of the Constitution of the United States, only when the court had jurisdiction of the cause and of the parties; and that the defendant, when sued upon the judgment here, may plead and prove, notwithstanding any recitals in the record thereof, that he was not duly served with process, and did not authorize an attorney to appear for him, in the action in which the judgment was rendered. *Gleason* v. *Dodd*, 4 Met. 333; *Phelps* v. *Brown*, 9 Cush. 390; *Carleton* v. *Bickford*, 13 Gray 591; *McDermott* v. *Clary*, 107 Mass. 501. It is only in the case of a domestic judgment that the defendant is put to his writ of error.

Bodurtha v. *Goodrich*, 3 Gray 508; *Finneran* v. *Leonard*, 7 Allen 54; *Hendrick* v. *Whittemore*, 105 Mass. 28; *Brainard* v. *Fowler*, 119 Mass. 262, 265."

The reasoning in *Thompson* v. *Whitman, supra,* has been quite uniform in this court and other courts, according to authorities under II of Points and Authorities.

According to the opinion of the Illinois court in this case, inquiry as to whether or not the Tennessee courts had jurisdiction of plaintiffs in error was declined because plaintiffs in error had asked the Tennessee courts to pass upon its jurisdiction of the persons of plaintiffs in error in three successive courts and those courts had decided the lower court in Tennessee had jurisdiction over the persons of plaintiffs in error.

If the lower court in Tennessee, being the Circuit Court of Chester county, did not have jurisdiction of plaintiffs in error, that court in deciding it had jurisdiction by being asked to pass upon the question, would not give the court jurisdiction; the same jurisdictional question presented to the other courts in Tennessee would not by cumulative decisions add to the jurisdiction over plaintiffs in error in either of the courts.

Of course, it would be true generally, that cumulative decisions of the courts on the question of jurisdiction of the person, at the instance of the parties, or upon the court's own motion would neither add to nor detract from the jurisdiction of the court where the method of acquiring jurisdiction of the

person is otherwise, as by service of process by an officer, or the entry of appearance.

As we understand it, jurisdiction of plaintiffs in error must have been acquired in one of two ways: (1) by service of process upon a duly authorized agent of plaintiffs in error transacting business in Tennessee by and for plaintiffs in errorr, or (2) by the entry of appearance, or its equivalent, waiver of service of process.

See authorities under No. III of Points and Authorities.

If these are the only methods by which the Tennessee courts could have acquired jurisdiction, it would be illogical for the Illinois court to say the Tennessee courts acquired jurisdiction of plaintiffs in error because they decided they had jurisdiction by cumulative decisions rendered and at the instance of plaintiffs in error; or, stated in another form, it seems illogical for the Illinois court to say they will not determine whether the Tennessee courts had jurisdiction of plaintiffs in error because the Tennessee courts determined that for themselves by cumulative decisions rendered at the instance of plaintiffs in error.

In questioning the jurisdiction of the Circuit Court of Chester county, Tennessee, plaintiff in error merely filed pleas to the jurisdiction of the person. The decision was against plaintiffs in error and successive steps by plaintiffs in error in the court of Appeals of Tennessee and the Supreme Court of Tennessee were merely asking those courts to review the decision of the Circuit Court of Chester

county, Tennessee; this court, in reference to such proceedings said in *Nations* v. *Johnson*, 24 How. 195, at page 204:

> "A writ of error is said to be an original writ, because, at common law, it was issued out of the court of chancery; but its operation is rather upon the record than the person. Under the Judiciary Act, says Marshall, Ch. J., the effect of a writ of error is simply to bring the record into court and submit the judgment of the inferior tribunal to re-examination. It does not in any manner act upon the parties; it acts only on the record, by removing the record into the supervising tribunal. Suits cannot, under the Judiciary Act, be commenced against the United States; and yet writs of error, accompanied by citations, have uniformly issued for the removal of judgments recovered in favor of the United States into this court for re-examination. Such cases are of daily occurrence, and the judgments are here reversed or affirmed, as they are with or without error; and it has never been supposed that the writ of error in such cases, though sometimes involving large amounts, was a suit against the United States. Plainly, therefore, there is a distinction between the writ of error and the original suit. According to the practice in this court, it is rather a continuation of the original litigation than the commencement of a new action; and such it is believed is the general understanding of the legal profession in the United States."

This court also said in *Pennoyer* v. *Neff*, 95 U. S. 714, at page 734, as follows:

> "It is hardly necessary to observe that in all we have said we have had reference to proceedings in courts of first instance, and to their jurisdiction, and not to proceedings in an appellate tribunal to review the action of such

courts. The latter may be taken upon such notice, personal or constructive, as the state creating the tribunal may provide. They are considered as rather a continuation of the original litigation than the commencement of a new action. *Nations* v. *Johnson*, ~~29~~ How. 195." 24

Defendant in error urges the rule of *res judicata*. This rule could hardly apply. The rule of *res judicata* applies where the court has jurisdiction of the persons and subject-matter, and has a right to pass upon the questions involved. Where a court has not jurisdiction of the persons its judgment on the merits is a nullity.

The decisions of the Tennessee courts were guided by their statute copied under No. II of Points and Authorities, a portion of which says: "Process may be served upon any agent of said corporation found within the county where the suit is brought no matter what character of agent such person may be, * * *." It is this statute that plaintiffs in error claim is unconstitutional, not only as to the part above quoted but also the further part which in substance says that if no agent of any character can be found the one who represented the corporation at the time the transaction out of which the suit arose took place, can be served. The Supreme Court of Tennessee has, as we are informed, held this statute constitutional. The same statute was under consideration in this court in *Mutual Life Insurance Company* v. *Spratley*, 172 U. S. 602, but it was there held the character of service under consideration was sufficient and the constitutionality of the statute was not passed upon.

It is the contention of plaintiffs in error, however, that this Tennessee statute authorizes a service of process and method of acquiring jurisdiction over the persons of plaintiffs in error violative of that principal of general law and of natural justice which forbids condemnation without opportunity for defense according to the authorities under No. III, Par. 2 of Points and Authorities.

III.

Assuming that the question of jurisdiction of plaintiffs in error should have been inquired into, and confining ourselves at present to Federal Life, the form of service of process that issued out of the Circuit Court of Chester county, Tennessee, was as follows:

> "The State of Tennessee to the Sheriff of Chester county, Greeting:
>
> You are hereby commanded to summon the Federal Life Insurance Company, a foreign corporation, if to be found in your county, to appear before the judge of our Circuit Court to be held for the County of Chester at the court house in the Town of Henderson on the first Monday in October next, then and there to answer Mrs. Bertha Ripman Cherry in an action of debt due by policy issued by the Chicago Life Insurance Company on the life of Rufus M. Cherry for her benefit, for the sum of twelve hundred and fifty ($1,250) dollars, and reinsured by the said Federal Life Insurance Company, and the further sum of five hundred ($500) dollars attorney's fees and interest to her damage eighteen hundred ($1,800) dollars. Herein fail not, and have you then and there this writ.

Witness, C. L. Parrish, clerk of our said court, at office, the first Monday in June, A. D. 1907.

C. L. Parrish, *Clerk.*

Issued 24th day of June, 1907.

C. L. Parrish, *Clerk.*" (Tr. p. 27.)

The return of service of this process was as follows:

"Executed as within directed by reading the same to G. G. Butler, agent of the Federal Life Insurance Company, or who represented the Federal Life Insurance Company at the time of the delivery of the policy sued upon and who was the agent of the Chicago Life Insurance Company, and it being the agent of the Federal Life Insurance Company in the delivery of the policy sued upon and represented said corporation at the time.

This 24th day of June, 1907.

Form 21.

Filed June 28, 1907. B. F. Weir, sheriff of Chester Co.; C. L. Parrish, clerk." (Tr. p. 27.)

The record shows that the said G. G. Butler solicited the insurance of one, Cherry, husband of defendant in error, for Chicago Life Insurance Company; that the application for the insurance was taken on a regular printed form of Chicago Life and that said Butler did not thereby represent Federal Life Insurance Company. (Tr. p. 78.)

That after the death of the insured Cherry, the said Butler was asked by Federal Life, it having reinsured the Chicago Life, to compromise as to the amount claimed by defendant in error on the policy of insurance; that said Butler went to defendant in error, but was unable to effect a compromise. (Tr. p. 78.)

That Mr. Butler's duties to effect a compromise ended with the single transaction and before the service of process upon him in Tennessee. (Tr. p. 127.)

There can be no presumption of jurisdiction for as said in *Galpin* v. *Page*, 18 Wall. 366:

> "When, therefore, the record states evidence or makes averments in reference to a judicial fact it will be understood to speak the truth on that point and it will not be presumed that there was other or different evidence respecting the fact or that the fact was other than averred."

To the same effect is *Old Wayne Asso.* v. *McDonald*, 204 U. S. at page 17.

The process that was issued out of the Circuit Court of Chester county, Tennessee, commanded the sheriff to summons Federal Life Insurance Company, a foreign corporation, if to be found in the county, etc. The return on that writ says in substance it was served upon G. G. Butler, agent of the Federal Life Insurance Company or who represented the Federal Life Insurance Company at the time of the delivery of the policy of insurance that is sued upon, and who, (meaning Butler) was the agent of the Chicago Life Insurance Company, it being the agent of the Federal Life Insurance Company in the delivery of the policy sued upon. (Tr. p. 27.) In other words, the service of process in Tennessee was upon Butler and then follows the assertion by the officer who made the service that Butler was the agent of the Federal Life because he was the agent of the Chicago Life when the policy of insurance was delivered and because Chicago

Life was the agent of the Federal Life when the policy was delivered.

Nowhere does it appear that Federal Life was doing business in Tennessee at the time this process was served. As we understand, it must appear Federal Life was doing business in Tennessee and its duly authorized agent was served, as said in *Peterson* v. *C. R. I. & Pac. Ry. Co.*, 205 U. S., at page 394:

> "But it is essential to the validity of such service that the corporation shall be doing business within the state and that the service be upon an agent representing the corporation with respect to such business."

See also *Goldey* v. *Morning News*, 156 U. S. 518.

Butler was served to get service on the Federal Life Insurance Company merely because of the provision in the Tennessee statute which says a foreign corporation may be served by serving the agent who represented the foreign corporation at the time of the original transaction out of which the suit arose, no matter what character of agency that may have been.

The assertion in the return of the writ to the effect that Butler was served as agent of the Federal Life is ineffective to establish the agency at the time of the service, for the record shows the extent of the agency. The record shows Butler had attempted to make a compromise between Federal Life and defendant in error; that he had a check of Federal Life to be offered defendant in error; that the attempted compromise failed and Butler's services ended; having represented Federal Life in a

single transaction which had ended the service upon him was not good.

Mutual Life Insurance Co. v. *Spratley, supra.*

Haas v. *Security Insurance Co.*, 57 N. J. Law, 388.

Neither could the return of the sheriff to the effect that Butler was served as the agent of the Chicago Life, it being agent of the Federal Life at the time of the delivery of the policy, be made effective as service upon an agent of an agent.

Peterson v. *C., R. I. & P. Ry. Co., supra.*

International T. B. Co. v. *Heart*, 136 Fed. Rep. 129.

Union Pacific R. R. Co. v. *Miller*, 87 Ill. 45

IV.

The process issuing out of the Circuit Court of Chester county, Tennessee to acquire jurisdiction of Chicago Life Insurance Company was directed to the sheriff of Davidson county, Tennessee, saying in part, "You are hereby commanded to summons Chicago Life Insurance Company, a foreign corporation authorized to do business in Tennessee, * * *."

On this writ was thereafter endorsed the following, "By virtue of authority in me vested I have today acknowledged service of the within summons for the Chicago Life Insurance Co. this 20th day of May, A. D. 1907, at 11:30 a. m. Reau E. Folk, Insurance Commissioner." (Tr. p. 18.)

The record fails to show that Chicago Life was licensed to do business in Tennessee or that any power was lodged with the one who acknowledged service; and it also fails to show that Chicago Life was doing business in Tennessee at the time of the acknowledgment of this service.

The Tennessee statute quoted under No. IV of Points and Authorities provides the method by which foreign corporations may be licensed to do business in Tennessee, and specifically provides that such foreign corporation may constitute and appoint the Insurance Commissioner or his successor his true and lawful attorney upon whom all lawful process in any action or legal proceeding against it may be served.

Another Tennessee statute quoted under No. IV of Points and Authorities provides that process shall be served by reading the same to the defendant or offering to read it in case he neglects or refuses to hear it read.

In *Settlemeier* v. *Sullivan*, 97 U. S. 444, it appears a notice which took the place of the process was addressed to the defendant notifying him to appear at a certain time. This notice was not served upon the defendant, but upon his wife by delivering copies to her at the usual place of abode. Judgment was rendered against the defendant upon this service upon the defendant's wife and it was held the service was not good and that presumption could not be indulged in aid of the service specifically shown in the record.

In *Farmer* v. *Mutual Life Association of Hartford, Conn.*, 50 Fed. Rep. 829, the insurance com-

pany being a Connecticut corporation was sued in the State of New York. The Insurance Commissioner of New York acknowledged service of process. The statute of New York authorizing foreign insurance companies to become licensed in New York, shown in the above authority, used this language:

> "* * * and having first appointed in writing the superintendent of the insurance department of this state to be the true and lawful attorney of such company in and for this state upon whom all lawful process in any action or proceeding against the company may be served with the same effect as if the company or association existed in the state, * * *."

The language of the Tennessee statute is as follows:

> "It shall * * * constitute and appoint the Insurance Commissioner * * * its true and lawful attorney upon whom all lawful process * * * may be served and therein shall agree that any lawful process against it which may be served upon its said attorney shall be of the same force," etc.

The federal decision last referred to, on page 831, says:

> "The superintendent of the insurance department had no power to waive an irregularity in the service, or to give any admission of service. If he has this power, he might date back his admission so as to put the defendant in default, or waive the statute of limitations. It could never have been the intention of the legislature to thus empower him to prejudice the rights of a corporate litigant. If, under the statute, the superintendent of the insurance department has the right to waive any defect in

the service of the process or any of the requirements of the statute, he has the right to waive them all. There can be no resting place between the two horns of this dilemma. If he has the right to waive a defect arising from the omission of the plaintiff to deliver a copy of the summons to him personally, he has a right to waive the omission of the plaintiff to furnish him with any copy of the summons at all, and may thus, without any notice to the insurance company, render it liable to a judgment by default against it in ignorance of its rights, or compel it, in order to avoid such judgment by default, to serve a general appearance, which may prejudice its rights to avail itself of the statute of limitations or otherwise, and waive any irremediable defects in the service or in the summons itself. This opportunity for collusion on the part of the public officer with the plaintiff, a citizen of his own state, who may have had important political influence in securing his appointment, it could never have been the intention of the statute to bestow, nor could it have been the intention of the defendant by its designation to grant. Had the legislature attempted to give him such power the statute would be unconstitutional and void, as taking away defendant's property without due process of law."

In *Hebal* v. *The Amazon Insurance Company*, 33 Mich. 400, service of process was accepted by an agent of a foreign corporation and it was held such service was void.

In *Bennett* v. *Supreme Tent of K. & M. of W.*, 82 Pac. (Wash.), 744, an insurance commissioner accepted service of a writ. At page 745 the court said:

"Can the statutory agent admit or waive service of summons? The agency created by

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the act in question, and by the commission provided for therein, is a passive agency. To hold that such agent can admit or waive service of summons, where no service has been in fact made, is to add materially to the powers conferred upon him by the statute and by his warrant of attorney. * * *

"Nor in our opinion can the service be made on the deputy insurance commissioner. It was so held in the case of *Lonkey* v. *Keyes, S. M. Co.*, 21 Nev. 312, 31 Pac. 57, 17 L. R. A. 351. The process is not served on the Insurance Commissioner by virtue of his office, nor does he derive his authority to bind the association from his office or from the laws of this state. His entire authority comes from the commission executed by the association, and the donee of the power in that instrument is the Insurance Commissioner and his successors in office."

In *Eisenhofer* v. *New Yorker Zeitung Publishing & Printing Co.*, 86 N. Y. Supp. 438, it appeared the statute required summons to be served on a domestic corporation by delivering a copy to the cashier. The service, however, was made upon one who receives money for papers sold by him in one of the departments. After this service the papers served reached the desired place. At page 439 the court said:

"Of course, the service of process for the commencement of an action or other legal proceeding is to give notice to the party proceeded against, and, if service which accomplishes that end answers the requirements of the statute, then this service is good. But it does not, and for the obvious reason that the legislature has seen fit to prescribe the manner in which jurisdiction of a domestic corporation may be obtained, and, where it is decreed that jurisdic-

> tion can be obtained only in a certain way, that way must be followed, to the exclusion of all others; and, unless it is, the service is ineffectual for any purpose. The legislature has the power to say how jurisdiction of a corporation can be obtained. It has so declared, and it is for the courts to enforce its mandate, and not prescribe some other one. To say that service of process upon some one not authorized by statute is good, because it ultimately reaches the person intended, is to constitute the courts a legislative body, instead of one authorized to construe and enforce statutes made by the legislature."

Plaintiffs in error respectfully ask that the judgment of the Appellate Court of Cook county, Illinois, and the Superior Court of Cook county, Illinois, be set aside.

That the statute of Tennessee, section 4545, quoted under No. II of Points and Authorities, be declared unconstitutional as authorizing a method of service of process which is contrary to that principal of natural justice forbidding condemnation without opportunity for defense.

That the service of process upon plaintiffs in error and issued out of the Circuit Court of Chester county, Tennessee, be declared null and void and contrary to the constitution of the United States in that it deprives plaintiffs in error of their property without due process of law.

That defendant in error should have filed with her declaration in the Superior Court of Cook county, Illinois, under the constitution of the United States and the Act of Congress passed in pursuance thereof giving full faith and credit to the rec-

ords and judicial proceedings in every state to the public acts of every other state, such document as should show the pleadings stating the subject-matter of the suit in Tennessee, the process, the method of service of process and judgment together with the certificates thereto; such documents as would show all the substantial portions of the proceedings in the Circuit Court of Chester county, Tennessee, between plaintiffs in error and defendant in error; having failed to do this, the suit should be dismissed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 171.

CHICAGO LIFE INSURANCE COMPANY AND FEDERAL LIFE INSURANCE COMPANY, PLAINTIFFS IN ERROR,

vs.

BERTHA R. CHERRY, DEFENDANT IN ERROR.

ADDITIONAL AUTHORITIES CITED BY PLAINTIFFS IN ERROR.

Now come said plaintiffs in error and cite the following authorities in support of propositions II and III set forth in their brief, to wit:

Cassidy *vs.* Auto. Time Stamp Co., 185 Ill., 431, 435.

Balt. & O. R. R. Co. *vs.* Freeman, 112 Fed., 237.

2 Black on Judgments, sections 171-218.

Guaranty Tr. & Safe Dep. Co. *vs.* Green Cove Sp'gs, 139 U. S., 137.

Scott *vs.* McNeal, 154 U. S., 43.

K's City, Ft. S. & M. R. R. Co. *vs.* Morgan, 21 C. C. A., 468.
Parr *vs.* U. S., 153 Fed., 462.
St. Sure *vs.* Lindsfelt, 82 Wis., 346.
1 Whitehouse Eq. Prac., sec. 186.
Fowler *vs.* Eddy, 110 Pa. St., 117, 120.
Murray *vs.* Am. Surety Co., 70 Fed., 341, 346.
Barnett *vs.* Openheimer, 59 Tenn., 298.

Also the following cases in support of point IV in brief of plaintiffs in error, viz:

Globe & Rutgers Fire Ins. Co. *vs.* Sayle, 65 So., 125 (Miss.).
Van Fleet's Collateral Attack, 14-486-505.
Vance *vs.* Pullman Co., 160 Fed., 711.

Respectfully submitted,

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1916.

No. 171.

CHICAGO LIFE INSURANCE COMPANY and THE FEDERAL LIFE INSURANCE COMPANY,
Plaintiffs in Error,
vs
BERTHA R. CHERRY,
Defendant in Error.

Error to the Appellate Court for the First District of the State of Illinois.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

STATEMENT.

Defendant in error originally brought suit against plaintiffs in error, in the Circuit Court of Chester County, Tennessee, upon an insurance policy, and on February 4, 1907, summons was issued against both defendants in that case. The summons against Chicago Life Insurance Company was served upon Reau E. Folk, Insurance Commissioner of the State of Tennessee, in accordance with the statute laws of the State of Tennessee, and the defendant, Chicago Life Insurance Company, appeared in the case as required by said summons, and, on the 14th day

of August, 1907, by its attorneys, filed a plea in abatement, denying that such service was sufficient. (Rec., 71.) The defendant in error filed a demurrer to said plea in abatement (Rec., 73), which demurrer was sustained. (Rec., 77-78.) The Chicago Life Insurance Company stood on its plea in abatement and thereupon judgment was rendered against Chicago Life Insurance Company.

The summons against Federal Life Insurance Company was served upon G. G. Butler, being the agent of Chicago Life Insurance Company, which was the agent of Federal Life Insurance Company. (Rec., 68.)

Notice of suit was also served upon Federal Life Insurance Company, at its main office in Chicago, Illinois. (Rec., 74-75.)

The defendant, Federal Life Insurance Company, filed its plea in abatement, denying proper service upon it. (Rec., 72-73.)

The cause was submitted to the court without the intervention of a jury, when, after hearing proof introduced, the court found the issues in favor of the plaintiff and overruled said plea in abatement. Federal Life Insurance Company stood by its plea in abatement and thereupon judgment was rendered against Federal Life Insurance Company and in favor of defendant in error. (Rec., 76.) Upon appeal, the Court of Civil Appeals of Tennessee affirmed the judgment of the Circuit Court against both defendants. (Rec., 107.)

Petition for certiorari was filed in the Supreme Court of the State of Tennessee and the judgment of the Court of Civil Appeals was affirmed and the writ of certiorari dismissed. (Rec., 121-122.)

Defendant in error thereupon brought suit in the Superior Court of Cook County against plaintiffs in error upon the Tennessee judgment and filed with her declaration, a copy of the judgment rendered in the Circuit Court of Chester County, Tennessee, the judgment of the Court of Civil Appeals of Tennessee affirming said judgment, and a copy of the judgment rendered in the Supreme Court of Tennessee dismissing the petition for certiorari. Both defendants filed pleas alleging lack of jurisdiction over the persons of both defendants in the Tennessee court. Defendant in error filed replications, setting forth therein the proceedings in the Tennessee courts, showing that the question of whether the Tennessee courts had jurisdiction of the defendants had been directly raised and tried in the courts of Tennessee, in which courts both defendants had appeared for the purpose of trying that very question, and that it had been decided by the Tennessee courts, as a matter of adjudication in those proceedings, that the Tennessee courts did have jurisdiction over the persons of the defendants. Upon the trial, defendant in error introduced in evidence a complete record of all of the proceedings and the judgments rendered in the Circuit Court of Chester County, Tennessee, the Court of Civil Appeals of Tennessee, and in the Supreme Court of Tennessee.

The Superior Court of Cook County declined to receive evidence on the part of the plaintiffs in error tending to show that the Tennessee courts had no jurisdiction over the persons of the plaintiffs in error, holding that the adjudication by the Tennessee courts (where the question was directly raised and tried and decided as a matter of adjudication) that

they did have jurisdiction over the persons of plaintiffs in error is *res adjudicata* upon the same point being raised in the courts of Illinois. Judgment was thereupon rendered against both defendants (plaintiffs in error) in the Superior Court of Cook County. Plaintiffs in error prayed an appeal to the Supreme Court of Illinois (Rec., 134), where all appeals from the Superior Court must be taken in which a constitutional question is involved. Jones & Addington Illinois Statutes Annotated, Ch. 110, Sec. 118, Par. 8655.

The appeal was transferred by the Supreme Court to the Appellate Court of Illinois, First District, to which all appeals must be taken not involving a constitutional question or other special questions, wherein appeal is provided directly to the Illinois Supreme Court. Jones and Addington Illinois Statutes Annotated, Ch. 37, Sec. 8, Par. 2968.

The Appellate Court of Illinois, First District, affirmed the judgment of Superior Court of Cook County. Thereupon plaintiffs in error filed a petition for certiorari in the Supreme Court of Illinois, which petition was denied.

Plaintiffs in error thereupon sued out a writ of error in this court, directed to the Appellate Court for the First District of Illinois.

POINTS AND AUTHORITIES.

I.

PARAGRAPH 32, CHAPTER 110, ILLINOIS REVISED STATUTES WAS FULLY COMPLIED WITH IN THE TRIAL OF THIS CASE IN THE SUPERIOR COURT OF COOK COUNTY.

Snyder v. *Snyder*, 25 Ind. 399.

White v. *Treon*, 25 Kans. 484.

Commercial Bank of Cincinnati v. *Buckingham*, 5 How. 317.

II.

THE COURTS OF TENNESSEE HAD JURISDICTION OVER THE PERSONS OF PLAINTIFFS IN ERROR.

The courts of Tennessee so decided when that particular point was put in issue and decided as a matter of adjudication.

If our contention under Point 3—that the adjudication of the Tennessee court is *res adjudicata*—is correct, then the point as to whether or not their decision is correct as a matter of law, cannot be raised in this proceeding. Therefore, we do not discuss this point further.

III.

THE ADJUDICATION BY THE COURTS OF TENNESSEE UPON THE ISSUE BEING DIRECTLY RAISED, TRIED AND DECIDED AS A MATTER OF ADJUDICATION THAT THEY DID HAVE JURISDICTION OVER THE PERSONS OF PLAINTIFFS IN ERROR IS RES ADJUDICATA IN THE COURTS OF ILLINOIS.

Thompson v. *Whitman*, 18 Wallace 457.

2 Black on Judgments, 901.

Forsyth v. *City of Hammond*, 166 U. S. 504.

Firemen's Insurance Co. v. *Thompson*, 155 Ill. 204.

Hull v. *Webb*, 78 Ill. App. 617.

Van Matre v. *Sankey*, 148 Ill. 536.

Chicago Title & Trust Co. v. *Storage Co.*, 260 Ill. 485.

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Waldo v. *Waldo*, 52 Mich. 94.

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In re Wrisley, 126 Mich. 109.

In re Kellogg, 6 Vt. 506.

Magowan v. *Magowan*, 57 N. J. Eq. 322.

Kinnier v. *Kinnier*, 45 N. Y. Rep. 535.

Dobson v. *Pearce*, 12 N. Y. 156.

Johnson v. *Johnson*, 67 How. Pr. Rpts. 144.

IV.

THERE IS NO FEDERAL QUESTION INVOLVED IN THIS CASE TO GIVE THIS COURT JURISDICTION ON WRIT OF ERROR TO THE APPELLATE COURT OF ILLINOIS.

Buena Vista County v. *Iowa Falls & S. C. R. Co.*, 112 U. S. 165.

F. G. Oxley Stave Co. v. *Butler County*, 166 U. S. 648.

Ludeling v. *Chaffe*, 143 U. S. 301.

Phoenix Insurance Co. v. *Gardiner*, 11 Wall. 204.

Hooker v. *Los Angeles*, 188 U. S. 314.

Commercial Bank v. *Buckingham*, 5 How. 317.

Johnson v. *N. Y. Life Ins. Co.*, 187 U. S. 496.

Bride v. *Hoey*, 11 Pet. 167.

B. & P. Ry. Co. v. *Hopkins*, 130 U. S. 223.

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Lynde v. *Lynde*, 181 U. S. 183.

Sayward v. *Denny*, 158 U. S. 180.

DeLamar's Nevada Gold Mining Co. v. *Nesbitt*, 177 U. S. 529.

ARGUMENT.

1.

PARAGRAPH 32, CHAPTER 110, ILLINOIS REVISED STATUTES WAS FULLY COMPLIED WITH IN THE TRIAL OF THIS CASE IN THE SUPERIOR COURT OF COOK COUNTY.

The Illinois statute referred to, and quoted by plaintiffs in error, required the plaintiff to "file with the declaration a copy of the instrument sued upon."

Defendant in error in this case filed with her declaration in the Superior Court of Cook County a copy of the judgment rendered in Tennessee. She did not file a copy of all the evidence, pleadings and proceedings leading up to and forming the basis for that judgment, which plaintiffs in error contend should have been done.

The cases cited by plaintiffs in error in support of their contention hold merely that a suit upon a judgment is a suit upon a written instrument within the meaning of Paragraph 32, Chapter 110, Illinois Revised Statutes, *so that a copy of the judgment must be filed with the declaration.*

The cases cited do not hold, nor does any one of them hold, that the proceedings which led up to and were the basis for the judgment, are any part of the instrument sued upon. Defendant in error, in the Superior Court of Cook County, did not sue upon the placita, the summons, the evidence, or any other of the proceedings which authorized the Tennessee

court to enter its judgment. The suit was upon the judgment rendered by the Tennessee court and a true and correct copy of that judgment was filed by defendant in error with her declaration.

In *Snyder* v. *Snyder*, 25 Ind. 399, the court directly decided that in a suit upon a judgment it is not necessary that the copy of the judgment filed with the complaint should contain either a placita or an authentication. At page 401 the court says further:

> "To hold that a copy of the entire record must be filed, embracing often a voluminous mass of matter, utterly useless in the case, and not even admissible in evidence, making, in some cases, the costs of the transcript vastly exceed the sum in controversy, would be too absurd to be tolerated."

See also *White* v. *Treon*, 25 Kans. 484.

The question here raised involves the construction of an Illinois statute on a point of practice and upon that point the decision of the court of highest appellate jurisdiction in Illinois will be deemed conclusive in this court.

In *Commercial Bank of Cincinnati* v. *Buckingham*, 5 How. 317, this court said:

> "It is the peculiar province and privilege of the State courts to construe their own statutes; and it is no part of the functions of this court to review their decisions or assume jurisdiction over them on the pretense that their judgments have impaired the obligation of contracts. The power delegated to us is for the restraint of unconstitutional legislation by the States and not for the correction of alleged errors committed by their judiciary."

II.

THE COURTS OF TENNESSEE HAD JURISDICTION OVER THE PERSONS OF PLAINTIFFS IN ERROR.

The courts of Tennessee so decided when that particular point was put in issue and decided as a matter of adjudication.

If our contention under Point III—that the adjudication of the Tennessee courts is *res adjudicata*—is correct, then the point as to whether or not their decision is correct as a matter of law, cannot be raised in this proceeding. Therefore, we do not discuss this point further.

III.

THE ADJUDICATION BY THE COURTS OF TENNESSEE UPON THE ISSUE BEING DIRECTLY RAISED, TRIED AND DECIDED AS A MATTER OF ADJUDICATION THAT THEY DID HAVE JURISDICTION OVER THE PERSONS OF PLAINTIFFS IN ERROR IS RES ADJUDICATA IN THE COURTS OF ILLINOIS.

Plaintiffs in error in their brief have cited many cases to the effect that the jurisdiction of a court rendering a judgment may be inquired into when that judgment is sued upon in another state. We do not dispute the correctness of the above as a general rule and when applied to the facts of the cases in which the rule is announced. They have cited many other cases to the effect that a general finding of jurisdiction or the mere recital of jurisdiction in a judgment rendered by the court will not prevent its jurisdiction being inquired into by the courts of another state.

We agree that is the law, but that is not the point in issue in this case.

The reasoning of the principle last mentioned is clearly set forth in the leading case of *Thompson* v. *Whitman,* 18 Wallace 457, cited in the brief of plaintiff in error, which states:

> "But if it is once conceded that the validity of a judgment may be attacked collaterally by evidence showing that the court had no jurisdiction, it is not perceived how any allegation contained in the record itself, however strongly made, can affect the right so to question it. * * * If any such statements could be used to prevent inquiry, a slight form of words might always be adopted so as effectually to nullify the right of such inquiry."

Clearly, the above reasoning would not be applicable to a case where the court not merely recited in its judgment by mere "form of words" that it had jurisdiction, but directly tried the question of its jurisdiction as an issue in the case and decided that it had jurisdiction, not by a mere finding, but as a matter of adjudication after full hearing and argument.

The cases cited by counsel and the reasoning of the same are not applicable to the case at bar.

The above distinction is clearly set forth in 2 Black on Judgments, paragraph 901. In the first part of the paragraph the author states that recitals of jurisdiction in a judgment are not conclusive on that point when that judgment is sued upon in the courts of a sister state. The author then quotes from the opinion of Mr. Justice Bradley, delivered in the leading case of *Thompson* v. *Whitman, supra,*

But in the latter part of the paragraph the author says:

> "Before leaving this point it is necessary to remark that there is good authority for the proposition that if it appears affirmatively from the record of the judgment, *and as a matter of adjudication*, that the defendant had legal notice of the suit or duly authorized an appearance to be entered for him, then he is no longer at liberty to allege a want of jurisdiction. The reason of this is obvious. In such a case the question of jurisdiction would be one of the grounds of defense to the original action, there set up and adjudicated, and of course equally concluded with any other defense. And hence the principle which forbids a re-examination of the merits of the controversy would apply."

In *Forsyth* v. *City of Hammond*, 166 U. S. 504, suit was originally brought by the *City of Hammond* v. *Forsyth* for the purpose of annexing the latter's property to the city. The issues were determined in favor of the city and Forsyth appealed to the Supreme Court of Indiana, which affirmed the decision of the lower court. Later, Forsyth brought suit in the Circuit Court of the United States for an injunction and this court held that in the United States Circuit Court the decision of the Supreme Court of Indiana was *res adjudicata* as to all matters decided, including the matter of jurisdiction. At page 517 this court says:

> "After an adverse decree she insisted that it was not only erroneous but void, and voluntarily commenced an action in the Supreme Court of the state to have that claim established. She invoked the jurisdiction of that court. She summoned the City of Hammond into that forum and there challenged the decree of the Circuit Court, challenged it for error and *also for lack*

> *of jurisdiction.* The questions both of error and *of jurisdiction* were certainly judicial in their nature and questions within the undoubted cognizance of the Supreme Court. She voluntarily sought its judgment. Can she, after its decision, be heard in any other tribunal to collaterally deny the validity thereof? Does not the principle of *res adjudicata* apply in all its force? Having litigated a question in one competent tribunal and been defeated, can she litigate the same question in another tribunal, acting independently, and having no appellate jurisdiction? * * * Though the form and causes of action be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in the one action is conclusive between the parties in all subsequent actions."

The earlier Illinois decisions held that a mere recital of jurisdiction in the judgment of the court of a sister state was conclusive on the point of jurisdiction in the courts of this state.

In *Firemen's Insurance Co.* v. *Thompson*, 155 Ill. 204, the court says, at page 209:

> "Jurisdiction of the person of appellant was obtained by due service upon a party declared by statute to be its agent for that purpose, and the court found that such party performed the acts named in the statute which were necessary to constitute him such agent, and no attempt was made by appellant to have this judgment set aside or reversed in the courts of that state. The court found, specifically, the facts necessary, under the statute, to give it jurisdiction of appellant upon the service had, and that it had jurisdiction of the subject-matter if of the person of appellant, as we have seen it had, is not questioned. This being so, it is manifest that the judgment is entitled to have the same credit, validity and effect in this state which it has in the state where rendered. Whatever pleas would

> be good to a suit on the judgment in that state, and no others, can be pleaded in the courts of this state. (Cases cited.) These principles, it would seem, are conclusive against appellant and further discussion is unnecessary."

In *Hull* v. *Webb*, 78 Ill. App. 617, which was an action upon a New York judgment, the court says, at page 622:

> "Finally, appellant objects that he was not properly served with process in New York. The New York court found that there was '*due proof of the service of the summons* and complaint in the action upon the defendant, Charles A. Hull, personally.' This is conclusive on appellant. *Zepp* v. *Hagar*, 70 Ill. 223; *McMillan* v. *Lovejoy*, 115 Ill. 498; *Harrison* v. *Hart*, 21 Ill. App. 348."

In the case of *Forsythe* v. *Barnes*, 228 Ill. 326, however, the Illinois Supreme Court modifies its former decisions cited above to the extent of holding that a mere recital of jurisdiction in a foreign judgment will not render the judgment conclusive upon that point in a suit in another state.

No court has ever held, so far as we have been able to discover, that where the court of another state has found, not by a mere recital in its judgment, but upon a full hearing and as a matter of adjudication upon an issue directly raised to determine that point, that it did have jurisdiction over the parties, that such adjudication is not *res adjudicata* in the courts of this state.

In *Van Matre* v. *Sankey*, 148 Ill. 536, complainant filed a bill in chancery in the Cook County Circuit Court alleging that she and others, including Caroline C. Sankey, were heirs at law of Samuel Sankey,

who died intestate, seized of certain property, of which partition was sought among said collateral heirs of said decedent. In the Illinois court it was contended that there was no legal adoption of Caroline C. Sankey by Samuel Sankey, for the reason that the court was without jurisdiction to enter the decree because said Samuel Sankey was not, at the time, a resident of the County of Lycoming, and State of Pennsylvania, where the order was entered, within the contemplation and meaning of the statute of that state.

The question of whether Samuel Sankey was a resident of Lycoming County, Pennsylvania, within the meaning of the statute, so as to give jurisdiction to the Pennsylvania court, was directly presented in the proceedings for adoption in Pennsylvania. At page 551 the court says:

> "We are now called upon by the same parties who sought to have the decree of adoption set aside in the courts of Pennsylvania, where it was made, and who claim title under and through said Samuel Sankey, to place upon the statute of that state a construction differing materially from that put upon it by those courts, and to hold that Samuel Sankey was not, at the time of the adoption, a resident of Lycoming County, Pennsylvania, within the meaning of said statute, and that therefore the court was without jurisdiction to enter the decree. Neither in the petition of the collateral heirs filed in the Court of Common Pleas of Lycoming County, Pennsylvania, nor in the original bill filed in this case, is the allegation of the original petition filed by Samuel Sankey, that he was, at the time of the application for adoption, 'a temporary resident at Williamsport,' in the County of Lycoming, etc., controverted. It will thus be seen that the question there and here

presented was whether a temporary residence was sufficient to authorize the adoption under the statute of Pennsylvania. Where a statute of a state has been given construction by the highest tribunal of the state, such construction will, ordinarily, in the courts of a sister state, be adopted as binding and conclusive. (Cases cited.) The same rule has been recognized by the Supreme Court of the United States. (Cases cited.) And this, although the examining court finds that, upon similar language in a statute within their own sovereignty, they would place a different or even reverse construction. (*Supra.*)"

The court, in the same case, at page 553, says:

"It having been determined, upon direct proceeding, by the court of last resort of the state in which the decree was entered, that the Court of Common Pleas had jurisdiction to enter the decree, we are required to give it full faith and credit."

In *Chicago Title & Trust Company* v. *Storage Co.*, 260 Ill. 485, Chicago Title & Trust Company, as trustee in bankruptcy of the estate of Alexander Rogers, claimed title to certain property of the bankrupt by virtue of his having possession of said property. Certain creditors contested the claim of Chicago Title & Trust Company, as trustee, in the United States District Court and set up as one of the grounds of defense that the United States District Court had no jurisdiction over the matter because the bankrupt was not in possession of the property at the time of the filing of the petition in bankruptcy. For the purpose of determining whether or not it had jurisdiction, the United States District Court heard evidence upon the question as to whether or not the bankrupt had possession of the

property at the date of the filing of the petition in bankruptcy, and found the issues on that point against the trustee, and thereupon determined, as a matter of adjudication, that it had no jurisdiction.

When suit was later brought in the Illinois state court, the same question arose as to whether or not the bankrupt was in possession of the property at the time of the filing of the petition in bankruptcy, and the trial court held that that point having been determined as a matter of adjudication by the United States District Court, such finding was conclusive in the Illinois state court, and all evidence tending to prove such possession was excluded as irrelevant, incompetent and immaterial. The ruling of the lower court was upheld, and at page 493 the court says:

> "An estoppel by verdict is but another branch of the doctrine of *res judicata*, and it rests upon the same principle of law—that is, that a matter once litigated between parties to a final judgment in a court of competent jurisdiction cannot again be controverted. *When this doctrine is applied to a single question or point arising in the course of litigation which has finally been adjudicated it is designated as an estoppel by verdict, and the same question or point cannot again be litigated between the same parties in the same or any other court at law or in chancery, and neither party, nor their privies, will be permitted to allege anything inconsistent with the finding upon that question. Hanna* v. *Read*, 102 Ill. 596; *Wright* v. *Griffey*, 147 *id.* 496; *Markley* v. *People*, 171 *id.* 260; *People* v. *Hill*, 182 *id.* 425; *People* v. *Chicago, Burlington & Quincy Railroad Co.*, 247 *id.* 340.
>
> The rule established by the above and other authorities is conceded, but it is contended that the district court having determined that it had no jurisdiction of the subject-matter, its deter-

mination of any fact upon which that conclusion was based cannot be an estoppel by verdict in respect to such fact. We cannot assent to this view. The United States District Court had the parties to this litigation before it and an issue as to its jurisdiction was joined, the determination of which required that court to try the question of possession. If the unreversed judgment of the district court upon the jurisdictional question was a nullity and operated merely as an involuntary non-suit, appellant could have immediately instituted the same suit in the same or some other court, and this procedure might have gone on indefinitely or until some court was found that would decide the question the other way. *The doctrine of estoppel by verdict applies to questions arising upon an issue as to the jurisdiction of the court as fully and completely as to questions arising upon the trial of a cause upon its merits,* and is not affected by the circumstance that the court may ultimately determine that it can go no farther. This precise question was decided by the United States Supreme Court in *First Nat. Bank* v. *Chicago Title and Trust Co., supra,* and by this court in *Hill Co.* v. *Contractors' Supply Co.,* 249 Ill. 304, contrary to the contention of appellant. In our opinion there is no basis for the distinction which the appellant seeks to make, and that the general rule applicable to estoppels by verdict applies where jurisdiction depends upon issuable facts, and where there is an adjudication of such facts the averment of their existence cannot be contradicted and the judgment of the court must be regarded as conclusive. Brown on Jurisdiction, Sec. 19a; see, also, *Ryan* v. *Barga,* 37 Iowa 80; *Northern Bank* v. *Porter Township,* 110 U. S. 615."

In *Napier* v. *Gidiere,* 40 Am. Dec. 613 (South Carolina), suit was brought in South Carolina on a judgment secured in New York and defendant attempted

to set up lack of jurisdiction of the New York court. At page 616 the court says:

> "Much diversity of opinion seems to have existed as to what might be pleaded to an action on a judgment in another state. In *Hinton* v. *Townes*, 1 Hill 445, Judge O'Neal says that it is to be tested by the inquiry whether it would or would not be good in the state where the judgment was obtained; and Chief Justice Marshall in *Hampton* v. *McConnel*, 3 Wheat. 234, holds the same doctrine. 'And whatever pleas,' says he, 'would be good to a suit thereon in such state' (the state in which the judgment was obtained) 'and none others, could be pleaded in any court in the United States.' That, I think, is laying down the rule too broadly, and the whole force of it was not seen at the time, nor was the question in either case necessarily involved. All that was intended by the act of Congress, was to render the judgment *conclusive of everything decided by it;* that is, its effect in the court in which it was obtained, and of necessity the fact of the judgment can only be tested by the plea of *nul tiel record.* * * * *If it appear from the record, as by the plea to jurisdiction, that the question was whether one or another of the courts of the state where the cause was tried, had jurisdiction of the subject-matter, the judgment on that point would, according to the rule before laid down, be conclusive.*" * * *

In the case of *Waldo* v. *Waldo*, 52 Mich. 94, suit was brought in Michigan on an Indiana judgment. Defendant raised the point of lack of jurisdiction of the Indiana court, and attempted to give evidence as to the residence of the plaintiff when the Indiana judgment was rendered. The court refused the offer. At page 99 it says:

> "We must intend that the court in Indiana had jurisdiction of the subject of divorce; that

the parties submitted to have their case there heard and on the merits and that the mode of proceeding was in accordance with the laws of the state. And it is a necessary implication that the court, on the suit being brought in it, had the power to ascertain and decide whether it was rightly brought there. And the further implication is here equally imperative that such court did consider that question and did decide in favor of the jurisdiction. It heard the altercations and considered the evidence. It investigated and decided on the merits. Whether the plaintiff was a resident of Indiana was one of the matters to be settled on the law and evidence, and the judgment necessarily imports that the court decided on it and determined that she was a resident. It may have erred and there may have been false testimony, but neither of these, if admitted, would cause the judgment to be *ipso facto* void. * * *

The position taken is that it was competent in this private and collateral action to submit original evidence in regard to the plaintiff's residence during the suit for divorce and get a new finding on it and in case of its being repugnant to the ruling which the first tribunal, in adjudicating on the evidence before it, was led to make on the same point, to thereupon claim and insist that such opposite determination was sufficient to annul the judgment for divorce so far as concerns this case. Under the principle thus contended for, the fate of the prior judgment might depend on the slightest circumstantial difference between the evidence originally given and the evidence produced on such collateral inquiry. The whole might hinge on divergencies of opinion in regard to matters of inference concerning the plaintiff's actual intent. Indeed the event might turn on considerations still further removed from reliable criteria. The final result with all its important consequences might come at last to depend on the idiosyncrasies or the acquired peculiarities of the triers."

In *McClure* v. *Paducah Iron Co.*, 90 Mo. Appeal Repts. 567, the plaintiff recovered a judgment against the defendant company in the Circuit Court at St. Louis, Mo., and afterward filed a new suit in the nature of a creditors' bill. In the creditors' bill the defendant contended that the Circuit Court in the original judgment did not have jurisdiction over the defendant company. At page 574 the court says:

> "GOODE, J. I. A plea to the Circuit Court's jurisdiction over the Paducah Iron Company was interposed in the original action instituted by the plaintiff, to recover the balance due him for his work in erecting and equipping the Paducah plant, on the ground that said company was a Kentucky corporation, having no office, place of business or business representative in this state. Evidence was taken on the plea and it was overruled by the Circuit Court, whose judgment is conclusive and the point cannot be examined on its merits in this collateral proceeding. *Baisley* v. *Baisley*, 113 Mo. 544; *Reed* v. *Nicholson*, 158 Mo. 524."

In *In re Wrisley*, 126 Mich. 109, a wife instituted suit against her husband in Kalamazoo County for divorce. He subsequently brought suit for divorce against her in Charlevoix County. To that suit she interposed a plea in abatement, setting up her suit pending in the Kalamazoo Circuit Court. The Charlevoix Circuit Court entered a decree overruling the plea in abatement, and entered a decree in favor of the husband. Later the Kalamazoo court entered a decree in favor of the wife. At page 112 the court says:

> "The Circuit Court for Charlevoix County decided that issue against her, held that it had jurisdiction of the case, and that the Kalamazoo Circuit did not have jurisdiction. Had she

not interposed this plea in abatement, a question would arise that we need not now discuss. She voluntarily submitted the question of jurisdiction to the Circuit Court for the County of Charlevoix. It had the power to pass upon it. It did so, and the decree of that court is binding upon both the parties until reversed by an appellate court. The question is *res adjudicata* and she cannot raise it in a collateral proceeding. *Peters* v. *Youngs*, 122 Mich. 484 (81 N. W. 263); 1 Black, Judgm., par. 274; *Elliott* v. *Peirsol's Lessee*, 1 Pet. 328. The language of this court in *Palmer* v. *Oakley*, 2 Doug., at page 475 (47 Am. Dec. 57), sustains this view."

In *In re Kellogg*, 6 Vermont 506, defendant was confined to jail under a writ of attachment issued against him by a justice, and this suit was a *habeas corpus* proceeding to relieve him from imprisonment. Among other things, it was contended that the court originally had no jurisdiction. At page 509 the court says:

"The irregularity of the service was matter for abatement, and as a general rule, matter in abatement not pleaded is waived, and cannot be assigned for error. In this case it was pleaded in abatement, and adjudged upon by the justice, and is *res adjudicata*. His decision on a question within his jurisdiction is conclusive until appealed from and reversed."

In *Magowan* v. *Magowan*, 57 N. J. Eq. 322, the validity of an Oklahoma judgment was questioned in the New Jersey court on the ground that the Oklahoma court had no jurisdiction over the subject matter to render its decree. At page 323 the court says:

"We are told, however, that it appears by the recitals contained in the decree that the question whether the respondent was a *bona fide*

resident of Oklahoma for the statutory period was considered and decided by the Oklahoma court in determining whether it had jurisdiction, and that a recital in a decree of divorce made by the court of another state, that the petioner was a resident of that state for the statutory period, is conclusive in this state of the fact so recited. This, it is said by counsel, is the declaration of this court in *Fairchild* v. *Fairchild*, 53 N. J. Eq. 678.

An examination of the opinion in the case referred to will disclose that the rule there laid down is hardly so broad as is claimed. What we said in that case was that 'where the plaintiff in a cause is required by statute to have been a *bona fide* resident of the state in which his action is brought for a fixed period of time, in order to enable him to maintain his action, the ascertainment by the court of the fact of such residence necessarily precedes a consideration of the merits of the case, and the determination of that question by the court is final not only in the courts of that state, but in every other jurisdiction where the validity of the judgment comes in question, unless such determination has been procured by fraud.'

Accepting this as the true rule, it will be seen that whether or not we are bound by the adjudication of the Oklahoma court on the question of the respondent's domicile must depend upon whether or not such adjudication was procured by fraud. If it was rendered after all the facts bearing on that question had been fully and fairly submitted to the court, we must accept it as conclusive; but if it was procured by fraud we are not precluded by it from inquiring whether the respondent was not in fact a resident of this state at the time when he instituted his suit for divorce in the Oklahoma court, as is charged in the bill of complaint in this case."

The court then reviewed the facts and held that the decree had been procured by fraud.

In *Kinnier* v. *Kinnier*, 45 N. Y. Rep. 535, a divorce was procured in the State of Illinois, and afterward that decree was set up in New York. It was contended that the Illinois court was without jurisdiction, because the plaintiff was not a *bona fide* resident of Illinois at the time the decree was entered. At page 340 the court says:

> "Viewing them in the most favorable light for the plaintiff, the question is presented whether the Illinois decree can be attacked in this state in a collateral action because the plaintiff in that action was not actually a *bona fide* resident of that state at the time. I think not. It is conceded he was there, appeared in that court and filed his bill, and took the decree. The question whether he was a resident there, so as to enable him to file his bill, was for that court to determine, and although it may have decided erroneously, the decision cannot affect the validity of the judgment. The *status* of all persons within a state is exclusively for that state to determine for itself. * * *
>
> In *Dobson* v. *Pearce* (12 N. Y. 156) it was held that the record of a judgment of a sister state, when the parties appeared, is conclusive in this state as to the subject matter of the action, and as to all questions litigated."

In *Johnson* v. *Johnson*, 67 Howard's Practice Reports 144, action was brought by plaintiff against defendant for a limited divorce. The defendant in his answer set up the judgment of the Supreme Court of Massachusetts granting divorce in that state. The plaintiff claimed that the Massachusetts court had no jurisdiction over the parties. At page 145 the court says:

> "I do not deem it necessary, with reference to my view of this case, to decide whether or not the libelant actually resided in Boston when he

commenced his proceeding there, or whether or not the parties ever lived as husband and wife within the State of Massachusetts. I have come to the conclusion that the record of the Massachusetts court is binding upon the plaintiff, and that it shows all the facts necessary to give that court jurisdiction, both of the subject matter and of the parties.

It was for the Massachusetts court to determine the question of residence of the parties under the allegations of the libel. *Kinnier agt. Kinnier* (45 N. Y. 540) holds that 'the question whether he (the libelant) has a residence there so as to enable him to file his bill, was for the court to determine, and although it may have decided erroneously, the decision cannot affect the validity of the judgment. The *status* of all persons within a state is exclusively for that state to determine for itself. A wrong decision does not impair the power to decide or the validity of the decision when questioned collaterally.'

I hold that to be decisive of this branch of the case, and its effect is not shaken by the cases which are cited by the learned counsel for the plaintiff."

The same jurisdictional contentions which plaintiffs in error sought to raise in the court below were urged upon the original trial of the case in the Circuit Court of Chester County, Tenn., by pleas in abatement filed for that purpose by both plaintiffs in error. Both had entered their appearance and were before the Tennessee Circuit Court for the purpose of raising those jurisdictional questions. The Tennessee Circuit Court, after full hearing and argument upon the facts, decided, as a matter of adjudication, that it did have jurisdiction over plaintiffs in error. They sued out a writ of error in the Court of Civil Appeals, where that decision was

affirmed, and judgment again entered. It was later affirmed in the Supreme Court of Tennessee. Therefore, under the above authorities, we submit that the judgment of the Tennessee court is *res adjudicata* upon those jurisdictional questions which were directly raised, argued and adjudicated there, and it was not error for the court below to refuse to receive evidence offered for the purpose of inducing it to make a different decision upon the same facts than the decision of the Circuit Court in Tennessee, affirmed by the Court of Civil Appeals and affirmed by the Supreme Court of Tennessee.

IV.

THERE IS NO FEDERAL QUESTION INVOLVED IN THIS CASE TO GIVE THIS COURT JURISDICTION ON WRIT OF ERROR TO THE APPELLATE COURT OF ILLINOIS.

(*a*) The first point of error argued by plaintiffs in error involves a question of construction of Section 32, Chapter 110, Illinois Revised Statutes.

The question raised as to that point is whether said Section 32 requires the plaintiff in a suit at law to file with his declaration in a suit upon the judgment of a sister state (a) a copy of the judgment rendered in the sister state or (b) not only a copy of the judgment rendered in the sister state, but also a copy of all the pleadings and proceedings leading up to and forming the basis for that judgment.

Section 905, U. S. Revised Statutes, referred to by plaintiffs in error in their brief, refers merely to the method of proving the records and proceedings of the courts of one state in a suit in the court of another

state, as a matter of evidence. It has no bearing upon the determination of the question at issue under this point.

Questions purely of local practice under the laws of the state are not federal questions.

Buena Vista County v. *Iowa Falls & S. C. R. Co.*, 112 U. S. 165.

F. G. Oxley Stave Co. v. *Butler County*, 166 U. S. 648.

Ludeling v. *Chaffe*, 143 U. S. 301.

The proper construction to be given to a state statute in itself involves no federal question, but is exclusively for the state courts to determine.

Phoenix Insurance Co. v. *Gardiner*, 11 Wall. 204.

Hooker v. *Los Angeles*, 188 U. S. 314.

Ludeling v. *Chaffe*, 143 U. S. 301.

The jurisdiction of this court cannot be invoked to review the decision of a state court on the ground that a state act admitted to be valid has been misconstrued by the state court.

Commercial Bank v. *Buckingham*, 5 How. 317.

Johnson v. *N. Y. Life Ins. Co.*, 187 U. S. 496.

Where this court can see that the decision of a state court depended, not upon the question of the constitutionality of a state statute, but upon its construction, it will not take jurisdicion of the case under the twenty-fifth section of the Judiciary Act.

Bride v. *Hoey*, 11 Pet. 167.

B. & P. Ry. Co. v. *Hopkins*, 130 U. S. 223.

Lloyd v. *Matthews*, 155 U. S. 228.

In the case at bar, plaintiffs in error do not question the constitutionality or the validity of Section 32, Chapter 110, Illinois Revised Statutes. They question only the construction which the Illinois courts have placed upon that section of the Illinois statutes, which clearly is not a federal question.

This court has held that a real, and not a fictitious federal question, is essential to the jurisdiction of this court over the judgments of the state courts. Unless the federal question asserted is, in reality, a federal question, the writ of error will be dismissed.

Hamblin v. *Western Land Co.*, 147 U. S. 531.

Equitable Life Assurance Society v. *Brown*, 187 U. S. 311.

(*b*) The other point of error raised by plaintiffs in error is that the Superior Court of Cook County erred in holding that the decision of the Tennessee courts, that the Circuit Court of Chester County, Tennessee, had jurisdiction over the persons of plaintiffs in error, was *res adjudicata* in the Superior Court of Cook County.

Whether the decision of the Tennessee courts upon the question being directly raised in the Tennessee courts, that they had jurisdiction over the persons of plaintiffs in error, is *res adjudicata* in the courts of Illinois, is a question merely of *res adjudicata* and is not a federal question.

The only possible federal question that could be involved in a decision of this proposition is whether or not the Illinois court was giving full faith and credit to the judicial proceedings of Tennessee. Inasmuch as the Illinois court decided that the decision of the Tennessee court is *res adjudicata*, the

decision of the Illinois court, if it involved the full faith and credit clause at all, was in favor of the full faith and credit claimed for the decision of the Tennessee courts.

A decision of a state court in favor of the full faith and credit claimed for a decree by a court of another state cannot be reviewed on writ of error by the Supreme Court of the United States.

Lynde v. *Lynde,* 181 U. S. 183.

The Supreme Court is without jurisdiction to review a decision of a state court involving a constitutional right, unless such decision was against the right claimed.

Sayward v. *Denny,* 158 U. S. 180.

DeLamar's Nevada Gold Mining Co. v. *Nesbitt,* 177 U. S. 529.

We submit, therefore, that there is no federal question involved in this case, and that the writ of error should be dismissed.

Respectfully submitted,

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CHICAGO LIFE INSURANCE COMPANY ET AL. *v.* CHERRY.

ERROR TO THE APPELLATE COURT FOR THE FIRST DISTRICT OF THE STATE OF ILLINOIS.

No. 171. Argued April 18, 1917.—Decided May 7, 1917.

In an action on a sister state judgment a state court may inquire whether there was personal jurisdiction in the prior proceedings, notwithstanding the question was raised by the judgment defendant and affirmatively decided against him after full hearing both in the trial court which rendered the judgment and in the appellate courts of the same State to which he took the case for review.

The claim that a money judgment by a state court violates due process for want of jurisdiction over the defendant's person is not sustainable if the jurisdiction was questioned by him by plea in abatement and by proceedings in the state courts of review, and sustained after fair hearings before the judgment became finally effective.

A judgment rendered in such circumstances, being sued upon in the courts of another State, was sustained upon the ground that the matter of personal jurisdiction could not be reopened. *Held*, that no violation of due process was involved, since the original judgment satisfied due process and the reason assigned for upholding it, if erroneous, amounted only to a mistake concerning the law of the State in which the judgment was rendered.

A decision of a state court upholding a judgment of another State raises no question in this court under the Full Faith and Credit Clause.

What documentary matter should be filed with the declaration in an action in a state court upon a sister state judgment is a local question not reviewable by this court.

190 Ill. App. 70, affirmed.

THE case is stated in the opinion.

Mr. Charles A. Atkinson, with whom *Mr. Chilton P. Wilson* and *Mr. Charles J. O'Connor* were on the briefs, for plaintiffs in error:

The decisions of the Tennessee courts to the effect that they had jurisdiction over plaintiffs in error do not preclude the courts of Illinois from examining the record facts in the Tennessee courts to determine the question of jurisdiction. *D'Arcy* v. *Ketchum*, 11 How. 165; *Harkness* v. *Hyde*, 98 U. S. 476; *Haddock* v. *Haddock*, 201 U. S. 572; *Thompson* v. *Whitman*, 18 Wall. 457; *Sheldon* v. *Wabash Ry. Co.*, 105 Fed. Rep. 785; *Gilman* v. *Gilman*, 126 Massachusetts, 26; and other cases. A court cannot acquire jurisdiction by the mere assertion of it. *Gould* v. *Glass*, 19 Barb. 179; *Harkness* v. *Hyde, supra; In re Eichoff*, 101 California, 600; *Williamson* v. *Berry*, 8 How. 495; Brown on Jurisdiction, 2d ed., § 26. In raising the question plaintiffs in error merely filed pleas to the jurisdiction of the person; they entered no general appearance. In a suit upon a judgment recovered in another State against a foreign corporation there is no presumption of jurisdiction arising from the judgment alone. *Galpin* v. *Page*, 18 Wall. 350; *Settlemier* v. *Sullivan*, 97 U. S. 444. The rule of *res judicata* is inapplicable; it applies only where the court has jurisdiction of both the person and the subject-matter.

The Tennessee decisions were based upon the peculiar statutes of that State (Code of Tennessee, §§ 4543, 4545) which provide for service of process upon any agent of a foreign corporation found within the county where the suit is brought "no matter what character of agent such person may be," or, if such agent cannot be found, the one who represented the corporation at the time the transaction out of which the suit arose took place. It is submitted that these provisions are unconstitutional in that they authorize the service of process and a method of acquiring jurisdiction without an opportunity to the defendant to be heard, and thus deprive plaintiffs in error of their property without due process of law. *Scott* v. *McNeal*, 154 U. S. 34; *Thompson* v. *Whitman, supra;*

St. Clair v. *Cox*, 106 U. S. 350; *Goldey* v. *Morning News*, 156 U. S. 158.

Where a foreign corporation is not transacting business in the State where the judgment was rendered, the court can only acquire jurisdiction by an entry of appearance or waiver of service. *Pennoyer* v. *Neff*, 95 U. S. 714; *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co.*, 205 U. S. 364; *Mutual Life Insurance Co.* v. *Spratley*, 172 U. S. 602; *Goldey* v. *Morning News*, 156 U. S. 518; and other cases.

The Federal Life Insurance Company was not doing business in Tennessee at the time of service, nor was service had upon its duly authorized agent. The service, therefore, was ineffectual to confer jurisdiction. *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co., supra; Goldey* v. *Morning News, supra.* The return of the sheriff stating that the person served was served as agent of the Chicago Life Insurance Company, it being agent of the Federal Life at the time of the delivery of the policy, is ineffective, as service upon an agent of an agent. *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co., supra; International T. B. Co.* v. *Heart*, 136 Fed. Rep. 129; *Union Pacific R. R. Co.* v. *Miller*, 87 Illinois, 45.

Service of process on the Insurance Commissioner as agent of the Chicago Life Insurance Company was also invalid. Section III, c. 253, of the Acts of Tennessee, requires service upon the Insurance Commissioner by the proper officer of the county in which the commissioner may have his office. The record fails to show that the Chicago Life was licensed to do business in Tennessee or that it was doing business there at the time of service. The statute does not and the Chicago Life did not authorize the commissioner to accept service for it. Where a statute provides the manner of service of process that method must be followed. *Settlemier* v. *Sullivan, supra; Farmer* v. *Mutual Life Association*, 50 Fed. Rep. 829, 831;

Hebal v. *Amazon Insurance Co.*, 33 Michigan, 400; *Bennett* v. *Supreme Tent of K. & M. of W.*, 82 Pac. Rep. 744; *Eisenhofer* v. *New Yorker Zeitung Pub. & Prtg. Co.*, 86 N. Y. Supp. 438. It follows that the process issuing out of the Circuit Court of Chester County, directed to the sheriff of Davidson County, and served on the Commissioner in the latter county as agent of the Chicago Life, did not confer jurisdiction upon the Circuit Court of Chester County, where the suit was brought.

The case of *Forsyth* v. *Hammond*, 166 U. S. 506, does not apply to the case at bar. In bringing action in the Supreme Court of Indiana, Mrs. Forsyth submitted herself to the jurisdiction of that court and the question whether the court had jurisdiction over her was not involved. In the present case the suing out of a writ of error in the Court of Civil Appeals and petitioning for a certiorari from the Supreme Court were not the bringing of an original or a new action in either of those courts. *Nations* v. *Johnson*, 24 How. 195, 204; *Pennoyer* v. *Neff*, 95 U. S. 714, 734. If the Circuit Court of Chester County did not have jurisdiction of plaintiffs in error, neither that court nor the Court of Civil Appeals had power to render judgment against them. *Goldey* v. *Morning News*, 156 U. S. 518; *Harkness* v. *Hyde*, 98 U. S. 476; *Walling* v. *Beers*, 120 Massachusetts, 549; *Fisher Sons & Co.* v. *Crowley*, 57 W. Va. 312.

Mr. Vernon R. Loucks, with whom *Mr. Fred H. Atwood* and *Mr. Charles O. Loucks* were on the brief, for defendant in error.

Mr. Justice Holmes delivered the opinion of the court.

This is a suit in Illinois upon a judgment recovered in Tennessee against the insurance companies, plaintiffs in error. They pleaded and set up at the trial that there never was a valid service upon them in Tennessee and

that the judgment was void. The defendant in error (the plaintiff) showed in reply, without dispute, that the defence was urged in Tennessee by pleas in abatement, that, upon demurrer to one plea and upon issue joined on the other, the decision was for the plaintiff, and that the judgment was affirmed by the higher courts. The plaintiff had judgment at the trial in Illinois, the judgment was affirmed by the Appellate Court and a writ of certiorari was denied by the Supreme Court of that State. The insurance companies say that the present judgment deprives them of their property without due process of law. Other sections of the Constitution are referred to in the assignments of error but they have no bearing upon the case.

The ground upon which the present judgment was sustained by the Appellate Court was that as the issue of jurisdiction over the parties was raised and adjudicated after full hearing in the former case it could not be reopened in this suit. The matter was thought to stand differently from a tacit assumption or mere declaration in the record that the court had jurisdiction.

A court that renders judgment against a defendant thereby tacitly asserts, if it does not do so expressly, that it has jurisdiction over that defendant. But it must be taken to be established that a court cannot conclude all persons interested by its mere assertion of its own power, *Thompson* v. *Whitman*, 18 Wall. 457, even where its power depends upon a fact and it finds the fact. *Tilt* v. *Kelsey*, 207 U. S. 43, 51. A divorce might be held void for want of jurisdiction although the libellee had appeared in the cause. *Andrews* v. *Andrews*, 188 U. S. 14, 16, 17, 38. There is no doubt of the general proposition that in a suit upon a judgment the jurisdiction of the court rendering it over the person of the defendant may be inquired into. *National Exchange Bank* v. *Wiley*, 195 U. S. 257. *Haddock* v. *Haddock*, 201 U. S. 562, 573. But when the power of the court in all other respects is established, what acts of the

defendant shall be deemed a submission to its power is a matter upon which States may differ. If a statute should provide that filing a plea in abatement, or taking the question to a higher court should have that effect, it could not be said to deny due process of law. The defendant would be free to rely upon his defence by letting judgment go by default. *York* v. *Texas*, 137 U. S. 15. *Western Life Indemnity Co.* v. *Rupp*, 235 U. S. 261, 272, 273. If without a statute a court should decide as we have supposed the statute to enact, it would infringe no rights under the Constitution of the United States. That a party that has taken the question of jurisdiction to a higher court is bound by its decision was held in *Forsyth* v. *Hammond*, 166 U. S. 506, 517. It can be no otherwise when a court so decides as to proceedings in another State. It may be mistaken upon what to it is matter of fact, the law of the other State. But a mere mistake of that kind is not a denial of due process of law. *Pennsylvania Fire Insurance Co.* v. *Gold Issue Mining & Milling Co.*, 243 U. S. 93, 96. Whenever a wrong judgment is entered against a defendant his property is taken when it should not have been, but whatever the ground may be, if the mistake is not so gross as to be impossible in a rational administration of justice, it is no more than the imperfection of man, not a denial of constitutional rights. The decision of the Illinois courts, right or wrong, was not such a denial. If the Tennessee judgment had been declared void in Illinois this court might have been called upon to decide whether it had been given due faith and credit. *National Exchange Bank* v. *Wiley*, 195 U. S. 257. But a decision upholding it upon the ground taken in the present case does not require us to review the Tennessee decision or to go further than we have gone. An objection that a copy of the document sued upon should have been filed with the declaration is a matter of state procedure and not open here.

Judgment affirmed.